

EXHIBIT B.28

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 MARK L. SOKOLOW, et al :

:

5 Plaintiffs :

:

6 v. : NO. 04cv397(GBD(RLE))

:

7 THE PALESTINE LIBERATION :

ORGANIZATION, et al :

8 :

Defendants :

9 :

10 -----x

11 Thursday, November 7, 2013

12 DEPOSITION OF:

13 ITAMAR MARCUS

14 a witness, called by counsel pursuant to notice,
 15 commencing at 9:00 a.m., which was taken at Miller &
 16 Chevalier Chartered, 655 15th Street, N.W., suite 900,
 17 Washington, D.C., 20005.

18

19

20

21

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1	Appearances			1	Exhibit Index (Continued)		
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3	Arnold & Porter, LLP			3	Exhibit 458	Hebrew Article	145
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5	New York, NY 10022-4690			5	Exhibit 460	Document	151
6	for Mark I. Sokolow			6	Exhibit 461	Palestinian Media Watch	173
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11	BINISH SULEMAN, ESQUIRE			11	Exhibit 466	The Jerusalem Report	248
12	Miller & Chevalier, Chartered			12	Exhibit 467	phill.com	252
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1	INDEX			1	PROCEEDINGS		
2	Deposition of Itamar Marcus			2	Whereupon,		
3	November 7, 2013			3	ITAMAR MARCUS,		
4	Examination by:	Page		4	called as a witness, having been first duly sworn to		
5	Mr. Rochon	5		5	tell the truth, the whole truth, and nothing but the		
6				6	truth, was examined and testified as follows:		
7	No.	Description	Marked	7	EXAMINATION BY MR. ROCHON		
8	Exhibit 444	Expert Report	8	8	BY MR. ROCHON:		
9	Exhibit 445	Rebuttal Report	10	9	Q. Good morning, Mr. Marcus. Could you please		
10	Exhibit 446	New York Times	24	10	tell us your full name.		
11	Exhibit 447	2003 Form 990-PF	40	11	A. Itamar Marcus.		
12	Exhibit 448	LexisNexis	45	12	Q. Mr. Marcus, my name is Mark Rochon. I'm an		
13	Exhibit 449	Form 990	50	13	attorney at Miller & Chevalier. And I represent the		
14	Exhibit 450	Form 990 - 2000	61	14	Palestinian Authority and the PLO in these cases. With		
15	Exhibit 451	Form 990 - 2001	77	15	me are Binish Suleman and Kara Schmidt, who also work		
16	Exhibit 452	Haaretz.com	79	16	at Miller & Chevalier and are assisting in these		
17	Exhibit 453	Honenu	81	17	matters.		
18	Exhibit 454	Honenu	83	18	Today in your deposition also in the room		
19	Exhibit 455	LexisNexis	89	19	is your counsel, Mr. Yalowitz and our Court Reporter.		
20	Exhibit 456	990 - 2003	94	20	During the course of our conversation today, if		
21	Exhibit 457	NY Synagogue	96	21	something I tell you isn't clear, please let me know		

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1 and I'll try to make it more clear.

2 And one thing, you need to say yes or no.

3 A. Yes.

4 Q. Your choice as to which to say, but you
5 have to make a sound, when I ask you a question, unless
6 your lawyer tells you not to.

7 And, therefore, if my question to you isn't
8 clear, you are not able to answer it, please tell me.

9 A. Okay.

10 Q. Mr. Marcus, we are going to discuss your
11 Expert Reports that you provided in this case, Sokolow
12 versus the Palestinian Authority and the PLO today. Do
13 you understand that to be case?

14 A. Yes.

15 Q. Before I get to those, I do want to get
16 some context. And I'm a context sort of person, so
17 understanding that the Reports describe what you did
18 here and what your claimed area of expertise is, I want
19 to first go into some areas where you're not claiming
20 to be an expert, and then we'll reach the areas where
21 you are presented as an expert. Do you understand?

Page 7

1 A. Yes, I understand.

2 Q. So, for example, your background, your
3 training, your qualifications, whatever they may be,
4 are not presented for you to be, for instance, an
5 expert in Islamic faith or tradition, correct?

6 A. When you say my background, do you mean my
7 formal university training?

8 Q. Yes.

9 A. Yes.

10 Q. And your work here in this matter has not
11 involved making any effort to find out specifically
12 what any of the allegedly involved persons in the
13 underlying incidents actually read themselves, correct?

14 A. Correct.

15 Q. Or what they watched on TV, correct?

16 A. TV. What they watched on TV.

17 Q. You haven't made an effort in your report
18 or otherwise to find out what Mosque they went to, if
19 any, correct?

20 A. Correct.

21 Q. And you haven't in the course of your work

Page 8

1 in this matter spoken or interviewed any Palestinian
2 leaders in connection with preparing your report. Is
3 that correct?

4 A. That is correct.

5 Q. Okay. I do want to turn to the reports
6 that you prepared. I think our next exhibit is 444. I
7 checked.

8 MR. YALOWITZ: I trust you on that.

9 MR. ROCHON: If I could have this marked as
10 444.

11 (Marcus Exhibit 444 marked for purposes of
12 identification.)

13 BY MR. ROCHON:

14 Q. Mr. Marcus, if you wouldn't mind having a
15 look at that. That's a photocopy of the Expert Report
16 that you submitted in this case, isn't it?

17 A. It seems to be, yes.

18 Q. And if you turn to the last page of that
19 Report, it bears a signature, does it not?

20 A. Correct.

21 Q. That is your signature?

Page 9

1 A. That's my signature.

2 Q. It is dated March 22, 2013; is that right?

3 A. Yes, it is.

4 Q. What portions of that Report did you write?

5 A. I wrote this entire Report. The wording is
6 a combination of my wording, as well as citations of
7 various sources. But the introductions, et cetera, I
8 have written.

9 Q. You referenced that it includes your
10 wording and the citations of various -- what was it you
11 said?

12 A. Reports. Not just reports. Quotes, things
13 that were said, things that were quoted, Palestinian
14 newspapers, things that appeared on Palestinians
15 television, quotes here from a report done by Asam
16 Died.

17 Q. So other than places where you are
18 including in your report quotations from others or
19 reports from others, did you write the rest of this
20 Report?

21 A. Yes.

Page 10

1 Q. You mentioned that you include quotations
2 and I should have asked you before when I was asking
3 about context. It is the case, is it not, that you do
4 speak or read Arabic? Is that right?

5 A. That is correct.

6 MR. YALOWITZ: Can we just pause off the
7 record for a moment.

8 (Discussion off the record.)

9 BY MR. ROCHON:

10 Q. Back on the record. What I was asking just
11 a second ago, and your counsel may have been
12 distracted, was, you do not speak or read Arabic; is
13 that correct?

14 A. That is correct.

15 Q. Let me show you a copy of your Rebuttal
16 Report and ask to have this marked as 445, please.

17 (Marcus Exhibit 445 marked for purposes of
18 identification.)

19 BY MR. ROCHON:

20 Q. Mr. Marcus, I show you 445. If you
21 wouldn't mind having a look at that. If you wouldn't

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1 background. That's what the next series of questions
2 relate to. You received your BA in Political Science
3 from the City University of New York in 1974?

4 A. Yes, '74.

5 Q. And in your Political Science Major from
6 the City University of New York, did any part of your
7 education focus on Palestinian culture?

8 A. No.

9 Q. Or Palestinians media?

10 A. No.

11 Q. Or the Islamic faith?

12 A. No.

13 Q. You received your Masters in Jewish Culture
14 from New York University in 1979. Is that right?

15 A. I think it was Hebrew Culture.

16 Q. In connection with your Master's Degree in
17 Hebrew Culture from NYU in 1979, did any part of your
18 study include academic studies of Palestinian media?

19 A. No.

20 Q. The Islamic faith?

21 A. No.

Page 11

1 mind turning to the last page.

2 Mr. Marcus, do you recognize this to be
3 your Rebuttal Report?

4 A. Yes, I do.

5 Q. Let me tell you, sir, that your original
6 Rebuttal Report did not include page numbers. We have
7 prepared one that includes page numbers to assist us in
8 referring to the report.

9 If you could, please, and I can work with
10 one that's not numbered, if you prefer, but it would be
11 easier, of course, if I need to reference a page
12 number, to have the page number in front of you.

13 So, please take a careful look at it and
14 make sure that, in fact, this is your report, but for
15 the fact we have added page numbers.

16 (Pause)

17 A. Yes.

18 Q. Thank you. That is, in fact, your Rebuttal
19 Report, but for the fact pages numbers have been added?

20 A. Yes.

21 Q. I do want to go into your educational

Page 13

1 Q. Or of Palestinian culture?

2 A. No, it was not part of the curriculum.

3 Q. Have you ever completed any higher
4 education that related to any aspect of Palestinian
5 society?

6 A. No.

7 Q. Not the Islamic faith either?

8 A. Correct.

9 Q. And have you received any higher education
10 in regard to Palestinian media?

11 A. Higher education -- no.

12 Q. You have never worked yourself in a
13 journalism or media capacity as an actual journalist;
14 is that right?

15 A. I have never worked as a journalist. I've
16 written many articles that were published. There was a
17 period of time I did a weekly column in a newspaper in
18 Israel. So, I don't know, weekly column calls me a
19 journalist, but that's what I did in connection with
20 formal journalism.

21 Q. All right. You have never worked in an

4 (Pages 10 to 13)

Page 14

1 intelligence capacity for any government; is that
2 correct?

3 A. Yes.

4 Q. Including, therefore, not the Israeli
5 Government?

6 A. That is correct.

7 Q. Nor the Palestinian Government, correct?

8 A. That is correct.

9 Q. You have had no work experience related to
10 investigating terrorism, detecting or preventing
11 terrorism, correct?

12 A. My work experience at Palestinian Media
13 Watch is not directly looking for terrorists, but I
14 certainly have been very involved in studying the
15 promotion of terrorism, the glorification of terrorism,
16 indoctrination to terrorism.

17 So definitely in that sense my workplace
18 has brought me into context with studying terrorism.

19 Q. Other than whatever work you have done at
20 Palestinian Media Watch, have you had any other work
21 experience related to investigating or detecting

Page 16

1 A. Yes. It would have ended in '96.

2 Q. That work you did there on religious or
3 social issues, equality issues, however you would
4 define it, did not focus on Palestinian society, did
5 it?

6 A. Correct.

7 Q. From 1979 to 1995 on your curriculum vitae
8 and other background information you do not list any
9 work experience, correct?

10 A. 1979 through -- I don't remember.

11 Q. If you wouldn't mind, look at Page 2 of
12 Exhibit 444. And on to Page 3 of Exhibit 444.

13 A. Page 2. Right. Yes, I don't list
14 anything.

15 Q. And your education, a Masters in Jewish
16 Culture. And just you mentioned before it may have
17 been in Hebrew Culture?

18 A. Yeah, I can't remember.

19 Q. In any event, your Report says Jewish
20 Culture.

21 A. Yes, I see that now.

Page 15

1 terrorists?

2 A. No.

3 Q. You also worked for one year, I believe, as
4 an adviser to Professor Shimon Shetreet in the area of
5 Religious Affairs?

6 A. He was a minister of Religious Affairs and
7 I was an adviser, it was not specifically, more social
8 issues and creating equality in society. That's what I
9 was doing.

10 Q. The focus -- that was for one year that you
11 worked with him?

12 A. I think it was a bit longer than a year. I
13 don't remember exactly dates. If you want, I can get
14 the dates for you.

15 Q. I don't think the precise will matter.
16 Less than two years?

17 A. It was sometime during the Rabin
18 Administration until the end of the administration. It
19 might have been two years.

20 Q. That would have been in the '95 to '96
21 period?

Page 17

1 Q. After getting that Masters in 1979, the
2 next entry under professional experience is 1995.

3 A. Right. For the purpose of this Report I
4 put in the professional experience that was related to
5 this. The period from 1979-19 -- is when I moved from
6 United States to Israel. At that point I was involved
7 in various different educational programs, as a
8 lecturer, as a teacher, informal education, formal
9 education, sometimes two or three programs where I was
10 involved at the same time. I did that until I started
11 working for more or less Shimon Sheerit.

12 Q. That period, whatever you were doing in
13 that period, it's not experience that you rely on for
14 purposes of this Report, correct? '79 to '95, whatever
15 it was you were doing.

16 A. It's certainly not directly related to the
17 Palestinian issue, but being involved in education and
18 working with youth and children made me very sensitive
19 to the issues of education and teaching. I think that
20 later on might have been -- certainly helped me get an
21 understanding of Palestinian society. It wasn't

5 (Pages 14 to 17)

Page 18

1 focused on Palestinian.

2 Q. The work in that period was in the place
3 where you lived?

4 A. What's that?

5 Q. The work from '79 to '95 was in connection
6 with the community in which you lived?

7 A. No. What do you mean "in connection"? I
8 was in various schools that I was teaching.

9 Q. Where were you living?

10 A. I was living in Israel.

11 Q. When did you move to Israel?

12 A. I moved to Israel actually twice, I should
13 say. I went to Israel in 1975. Stayed there for a few
14 years. I forget the dates now. I went in '75. Came
15 back to the United States in '77 and stayed 1977, I
16 guess, through 1980 or so. End of 1979, 1980 I was in
17 the states again. That's when I did my Masters.

18 Q. Okay. The educational activities that you
19 described that you were engaged in from 1979 to 1995,
20 were not involved at all with Palestinian education,
21 correct?

Page 19

1 A. Correct.

2 Q. From 1979 to 1995, you were involved with
3 the Central Fund of Israel as well?

4 A. I don't remember the date that Central Fund
5 of Israel was founded. I think it was toward the end
6 of the 1980's, if I remember correctly, is when I
7 started getting involved in it.

8 Q. What is the Central Fund of Israel?

9 A. Central Fund of Israel is an organization
10 that has its own charity programs that it runs in
11 Israel where charity has been distributed over the
12 years for new immigrants, for widows and divorcees with
13 a lot of children.

14 When I was there involved in Central Fund
15 of Israel, those are the programs that I was involved
16 with, just to give you a sense. Set up a legal aid
17 program to get Bar-Ilan University.

18 We had found at that point there was
19 restrictions Israel for pro bono work as lawyers for
20 clients. And worked something out with Bar-Ilan
21 University that students in their last year could work

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1 in community centers guided by a lawyer who would be
2 their educator.

3 And they would give -- people in the
4 different communities around the countries would fit
5 into the category of people who didn't have enough
6 money to defend themselves, could come and get free
7 legal advice from the students.

8 And then they would go back, all of them,
9 to their weekly classes. Then go back. And this was
10 the type of program that I was working on. This was
11 set up and it was a great success. We helped, I forget
12 how many, hundreds of people get free legal aid that
13 year.

14 Set up a program for distributing food for
15 Ethiopian immigrants who didn't have enough money to
16 buy food. And we found that giving them money was not
17 efficient, because they didn't necessarily know how to
18 spend the money properly. We got them discounts in
19 supermarkets.

20 My involvement in the Central Fund of
21 Israel was many different projects, legal free loans

Page 21

1 for people setting up small businesses and Central Fund
2 of Israel funded this.

3 In addition, Central Fund of Israel accepts
4 recommended contributions for different organizations.
5 I don't know how many are involved today. My brother
6 is running it today. I think it's a few hundred
7 institutions in Israel.

8 I spoke to him about this and many
9 different type of food distribution -- help a lot of
10 social welfare programs, psychological help for
11 children.

12 So this is what Central Fund does. In
13 addition to its own programs it also will accept
14 programs recommended for amuta. Amuta nonprofits in
15 Israel, and will transfer the money, if it's seem to be
16 a proper nonprofit, they will transfer the money.

17 Q. Thank you. I think most of what you said
18 would be fairly easy for Mr. Bennett to get down, but
19 you did mention a Hebrew word for the nonprofit?

20 A. Amuta.

21 Q. Could you please spell Amuta.

Page 22

1 A. A-M-U-T-A.

2 Q. And that's a word that refers to,
3 essentially the equivalent of 501(c)(3) in the United
4 States?

5 A. Almost. It's the equivalent with -- you
6 have to do -- there are two statuses of Amatu. You
7 could have a regular Amatu and then you could have one
8 that has a tax deductible status. Many of them don't
9 go the next stage for whatever reason.

10 Q. And the Central Fund of Israel in the
11 United States has obtained 501(c)(3) status, correct?

12 A. Correct.

13 Q. Your work with Central Fund of Israel
14 ended -- your participation as an officer in Central
15 Fund of Israel ended when?

16 A. I would have to also check. It's been many
17 years that I haven't been involved at all in Central
18 Fund. There was a period of time -- the Central Fund
19 was established by my family, by my parents, in order
20 to facilitate these charity programs many years ago.
21 Completely voluntary. All expenses they covered

Page 23

1 themselves.

2 And the reporting of the IRS was done by my
3 father in the mid '80s. Turns out that a number of
4 years, after I was no longer involved in the Central
5 Fund, my father had continued to list me as an officer
6 in the early reporting even though I had no
7 involvement.

8 When I became aware, I told him. He took
9 my name off. So there is a discrepancy between the
10 numbers of years when I was active and the actual
11 listing of my name as an officer.

12 Q. Where do you live?

13 A. I live in Israel in Efrat.

14 Q. And were you one of the first residents in
15 a settlement that was new at the time called Maale
16 Adumim?

17 A. Is a town just outside of Jerusalem. I
18 think there were probably 10,000 residents, when I got
19 there. I don't remember for sure. In fact, I remember
20 soon after I arrived there, they had a big celebration,
21 they had reached a large number of residents to go from

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1 being what is called a town technically to becoming a
2 city. So I certainly wasn't one of the first residents
3 there.

4 MR. ROCHON: Ask to have this marked 446.
5 (Marcus Exhibit 446 marked for purposes of
6 identification.)

7 BY MR. ROCHON:

8 Q. You have in front of you Exhibit 446. This
9 is a New York Times article from April 17th, 1986. It
10 quotes at the bottom of Page 1 someone named Itamar
11 Marcus. That's you, correct?

12 A. Correct. I just want to read.

13 Q. Of course.

14 (Pause).

15 MR. YALOWITZ: I'm not going to object, if
16 you want to ask him about his underlinings or stars or
17 circles or whatever he does. Fair game such as it is.
18 Some people like to read with pen in hand.

19 THE WITNESS: Okay. I read it.

20 BY MR. ROCHON:

21 Q. Thank you. In this article someone named

Page 25

1 Itamar Marcus is quoted describing Maale Adumim as a
2 hilltop home that was a desert when the first settlers
3 arrived there in 1974.

4 Do you see that near the bottom of the
5 first page of that article?

6 A. Yes. Well, I certainly had nothing to
7 do -- again, I have no idea. I mean, I can tell you
8 the facts. I don't remember this interview. If I said
9 we took this hill.

10 I remember, when my wife and I were told
11 about some land being available in Maale Adumim. We
12 drove out with some other families and we saw an area
13 that was eventually going to turn into. This was an
14 expansion section of Maale Adumim. It wasn't the
15 beginning of Maale Adumim. It was one tiny little
16 corner of Maale Adumim.

17 And the place where we were was actually
18 very hilly, and very rocky and, in fact, truck loads of
19 earth were put in to make it -- that's what I was
20 describing here.

21 We took this hill and brought in further

7 (Pages 22 to 25)

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1 earth to make it green. That was my quote and that is
 2 what happened in the area I was living. But no context
 3 about anything else but Maale Adumim.
 4 Q. Mr. Marcus, all I was showing you was, I
 5 had asked you if you looked in Maale Adumim. You said.
 6 No.
 7 A. I said, yes. I said I wasn't one of the
 8 first residents. I had nothing to do with the settling
 9 of the place and decision to build there or anything
 10 about it. That's all I was commenting on.
 11 Q. So where do you live?
 12 A. I live now in Efrat.
 13 Q. In 1986 you were living in Maale Adumim?
 14 A. When this was written, yes.
 15 Q. And Maale Adumim is where in relationship
 16 to the green line?
 17 A. Maale Adumim is what was formerly Jordanian
 18 territory.
 19 Q. What is commonly referred to as the West
 20 Bank?
 21 A. Or Judea.

Page 27

1 Q. Therefore, it is on what the Palestinians
 2 would consider inside the green line, that is, their
 3 side of the green line, correct?
 4 A. If they use the term the green line, I
 5 don't know, but certainly the Palestinians say that
 6 this is land that they would like.
 7 Q. And, therefore, it is appropriately termed
 8 "a settlement", correct?
 9 A. The term "settlement" today has a lot of
 10 negative imagery attached to it. It involves,
 11 sometimes people think it implies something illegal. I
 12 like to, and the residents of places like Maale Adumim,
 13 where I live now, Efrat, we see them as towns and areas
 14 that are disputed.
 15 They are not within the original borders of
 16 the State of Israel and they are, they have never been
 17 part of, accepted as part of another state. Jordan, as
 18 you know, annexed it, but wasn't recognized. And it's
 19 disputed land.
 20 So, if you mean settlement implying
 21 anything illegal, that's why I don't like the term,

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1 because of the town where I live --
 2 Q. You are aware in the world today people
 3 refer to "settlements" in the area of the West Bank?
 4 A. Yes, there are some people that do.
 5 Q. Those people who do refer to settlements
 6 would include Maale Adumim as one of them, wouldn't
 7 they?
 8 A. Could be, yes.
 9 Q. And so yesterday, when John Kerry said that
 10 the settlements are illegitimate after a meeting with
 11 President Abbas, one of the ones he would be referring
 12 to would be Maale Adumim, correct?
 13 A. I don't know because the American policy
 14 for a very long time has been to -- all of what they
 15 call settlements that are in the area surrounding
 16 Jerusalem that are within the security fence that
 17 Israel has built -- there is said to have been even a
 18 letter from President Bush to Netanyahu or sometime ago
 19 that they would see that as part of a future settlement
 20 between Israel and the Palestinians as being part of
 21 Israel.

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1 So if Secretary of State Kerry said he
 2 thinks settlements are illegitimate, I don't know what
 3 he was really thinking. It's very likely he was
 4 thinking possibly new building of settlements today.
 5 That seems to be what the United States has been
 6 concerned about now during the peace talks, as the new
 7 building. I don't think he was saying all settlements
 8 are illegitimate.
 9 Q. Well, move away from Senator Kerry then for
 10 a second. Maale Adumim is one of the places that
 11 people who use the term would call a settlement. How
 12 about Efrat where you live now?
 13 A. People who use the term "settlement" to
 14 describe Jewish -- Israelis living outside the green
 15 line would call it settlement, yes.
 16 Q. When did you move to Efrat from Maale
 17 Adumim?
 18 A. I think it was around '94. 93-94. I could
 19 look it up for you. It was around that period.
 20 Q. In that same period you helped to set up a
 21 movement that was called Movement for the Preservation

8 (Pages 26 to 29)

Page 30

1 of Israel's Water, correct?

2 A. Correct.

3 Q. And the purpose of the Movement for the
4 Preservation of Israel's Water was to ensure that
5 Israel retained the aquifer one the West Bank and did
6 not give it to the Palestinian Authority, correct?

7 A. The purpose was to point out to the Israeli
8 public, as well as, I learned very quickly, as well as
9 the Israeli, members of Israeli Government, and the
10 Knesset that the, I don't remember the figures right
11 now, it was a while ago, but a tremendous percentage of
12 Israel's water actually enters the ground in what is
13 called the West Bank.

14 And then under the ground it goes out and
15 it is retrieved or it comes to the surface in wells
16 within the green line, Israel's side of the green line.
17 And for that purpose I also gave documentation that too
18 much drawing of the West Bank wells could essentially
19 take all of the water that Israel needs for survival.

20 And my recommendation was that any future
21 borders that would be determined, Israel must not

Page 31

1 forget, they are very focused on security, but they
2 weren't focused on the water issue. And I felt that
3 people in Government should be made aware of this
4 issue.

5 Q. Leaving aside the making aware of the
6 issue, the actual goal of the Movement for the
7 Preservation of Israel's Water was for Israel to
8 maintain control of the aquifer that you are talking
9 about, correct?

10 A. Again, it goes back a while. I don't
11 remember the precise definition, but certainly that
12 would seem to be what we were talking about. Israel
13 has to control the aquifer.

14 Q. And even though the aquifer is underneath
15 in significant part the West Bank that most people
16 would consider to be inside the green line?

17 A. As I said, the water enters the aquifer in
18 the West Bank, travels underneath to the area across
19 the green line where it was taken out. And while
20 researching at the time I discovered in many places
21 around the world where water is a significant issue,

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1 and there are hardly any places where it's not a
2 significant issue, aquifer, for example, the Nile River
3 water, even though it originates before it reaches
4 Egypt, Egypt has by international -- there are no
5 specific laws by international conventions. And what
6 had been ruled in arbitration is that Egypt, for
7 example, had a major claim on having water continue to
8 come to them in the same quantity from the rivers
9 without Sudan, whoever it be taking more water than
10 they had been taking up to that point. The language in
11 the law was: Current use takes precedent by
12 international convention over future use.

13 And what my argument was to the Israeli
14 leadership and to the representatives of the Knesset
15 that precedent should be important for Israel as well.
16 Israel can't survive without that water.

17 The water had never been used by, when the
18 area was under Jordanian rule, the water hadn't been
19 used. It is being used by Israeli and, therefore,
20 Israel had to sure, based on that principle we see in
21 Africa, Israel should assure that it has continued use.

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1 In fact -- that was the purpose
2 essentially.

3 Q. You have referred several times to the
4 period of Jordanian rule and whether things were being
5 used.

6 Do you agree there's currently an
7 occupation -- there is, in fact, an occupied
8 Palestinian territory?

9 A. The areas of the West Bank, before 1967, as
10 you know, were occupied by Jordan. After Jordan after
11 the Six Day War -- until '67 occupied by Jordan. From
12 1967 onward Israel took control of the area.

13 United Nations 242 recognized Israel's
14 administration of the area essentially until new
15 borders would be drawn, new secured borders according
16 to the United Nations.

17 Israel -- the areas of the West Bank that
18 were given over to the Palestinian Authority are
19 Palestinian Authority are Palestinian areas. The areas
20 that were not given over to the Palestinian Authority
21 were never Palestinian territory and, therefore,

9 (Pages 30 to 33)

Page 34

1 certainly are not occupied Palestinian territory.
 2 Because in history they never were Palestinian
 3 territory.
 4 Q. Do you agree that there was an occupation
 5 of the Palestinian territory or not?
 6 A. No. As I explained to you, there was an
 7 occupation, the Jordanian occupation ended, and it was
 8 an occupation. It wasn't recognized. The Jordanian
 9 occupation ended in 1967.
 10 Israel then had administrative control of
 11 the West Bank by instructions of the United Nations.
 12 And that is, in my definition, that is not an
 13 occupation. That is administrative control by the
 14 United Nations.
 15 Areas were given to the Palestinian
 16 Authority and those areas are still under the
 17 Palestinian Authority. If Israel were to go take those
 18 areas again that were given to the Palestinian
 19 Authority, that would then be an occupation of
 20 Palestinian territory.
 21 But territory that has never in history

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1 been Palestinian cannot be an occupation of Palestinian
 2 territory.
 3 Q. You are familiar with the term "green line"
 4 we have used during the course of this conversation?
 5 A. Yes.
 6 Q. And what do you understand that to refer
 7 to, the border as of 1967?
 8 A. The green line is the border that was
 9 essentially 1949, it was an Armistead line, the war,
 10 Israel's war, called in Israel War of independence
 11 ended in 1949. I don't remember the month.
 12 And that cease fire line remained in place
 13 until 1967, when the Six Day War came about and there
 14 were new cease fire lines.
 15 Q. Which areas of the 1949 or 1967 lines would
 16 you consider to be the presence of Israeli authority to
 17 be in occupation?
 18 A. I'm sorry. Ask the question again.
 19 Q. Is there any area within the 1949 border
 20 where Israel currently has power, control that you
 21 would concede is an occupation of that territory?

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1 A. I'm sorry.
 2 MR. YALOWITZ: I object to the form. You
 3 might want to listen to it again.
 4 BY MR. ROCHON:
 5 Q. Thank you. You can answer the question.
 6 A. Again, I think I explained myself. Areas
 7 that Israel took control of under -- in the 1967 war,
 8 which the United Nations in UN Resolution 224, gave
 9 them administration of, until there would be new
 10 recognized borders, secured borders, those areas were
 11 under Israel, not as occupation, under UN decision.
 12 After the Oslo Accord there were certain
 13 areas that were given over to the Palestinian
 14 Authority. That's when those areas became Palestinian
 15 areas. Israel is not occupying those areas today.
 16 Q. Pursuant to the Oslo Accords there was
 17 reference to Areas A-B-C?
 18 A. Correct.
 19 Q. Which settlement in Area A, if there were
 20 to be one -- Israelis moving to a place to live in Area
 21 A, would you agree that was a settlement and was

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1 illegal?
 2 A. Israelis, again, illegal is a whole
 3 different issue. Certainly, if Israelis were moving, I
 4 don't understand the question. Israelis aren't moving
 5 into areas that are controlled by the Palestinian
 6 Authority.
 7 Q. I'm going one at a time. If in A, you
 8 would agree that would be a settlement that would
 9 violate those Accords?
 10 A. I would have to think about that. Again, I
 11 have to understand the context. Israel is not moving
 12 into Area A. If there were -- these are areas that
 13 were handed over to the Palestinian Authority. If
 14 there were some change in conditions, I don't know. I
 15 mean, right now, you know, under the conditions -- I
 16 mean, for example, change of conditions. During the
 17 period of the Intifada --
 18 Q. Which one?
 19 A. Okay. I'm going off. It's not important.
 20 Q. So you finished your answer?
 21 A. Yes.

10 (Pages 34 to 37)

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1 Q. What area do you live in?

2 A. I live in the Efrat.

3 Q. Is that within Area C?

4 A. That is within Area C. Area C means that
5 it has full Israeli security and civil control, as it
6 has since 1967.

7 Q. What was contemplated to be part of what
8 would become the State of Palestine, when negotiations
9 concluded, correct?

10 A. I don't understand what you mean by
11 "contemplated". By whom?

12 Q. The Oslo Accords. I'm not talking about
13 you. I'm talking about the Oslo Accords contemplated
14 Area C would eventually, after the establishment of a
15 Palestinian State, would be part of that state, right?

16 A. The Oslo Accords did not mention
17 Palestinian State. The Oslo Accords did not -- they
18 specifically said that, what was the findings of the
19 Oslo Accords settlements would be negotiated and
20 discussed in final status.

21 So there's nowhere, as far as I could see

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1 Q. How long before you moved there did the
2 first person move there?

3 A. Certainly a number of years. By the time
4 we got there, there were many, many thousands of
5 residents in Efrat.

6 Q. At one point you were the Vice President of
7 the Arthur & Hadassah Marcus Foundation, right?

8 A. It wasn't the Arthur --

9 Q. Arthur & Hadassah Marcus Foundation, you
10 were the Vice President of it, weren't you?

11 A. Central Fund of Israel you are referring?

12 Q. I'm actually trying to refer -- I may be
13 misspeaking. I'll see in a second.

14 (Marcus Exhibit 447 marked for purposes of
15 identification.)

16 BY MR. ROCHON:

17 Q. I'm going to show you what would be marked
18 as 447. Please note that the writing on the bottom
19 right I don't think was on the original form.

20 MR. YALOWITZ: This is Number 19?

21 MR. ROCHON: I don't know where the 19 came

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1 in the Oslo Accords that it was contemplated as part of
2 anything else.

3 Q. In the Interim Accords following Oslo and
4 in the Oslo Accords there's reference to settlements?

5 A. I would have to look.

6 Q. You just said there was.

7 A. I think there was. I think it talked about
8 settlements. I don't remember the language that was
9 used. If you have a copy, I would be happy to read it
10 again and see exactly the language used in the Oslo
11 Accords.

12 Q. Those Accords were between Israel and the
13 PLO, correct?

14 A. Correct.

15 Q. And your area where you live now, when was
16 it started, when did Efrat the first, I'll refer to
17 them as a settler, you can refer to them as you wish,
18 when did the first settler move to Efrat?

19 A. I have to look that up. I really don't
20 know the history of it. I'm sure I knew it at one
21 point. I can't remember the precise year.

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1 from. The 105 on the bottom is my handwriting.

2 MR. YALOWITZ: I don't have that.

3 MR. ROCHON: Actually, we are going to
4 change. We'll make this one 445. Because there's
5 highlighting in that one.

6 BY MR. ROCHON:

7 Q. Same document for you. I'm not going to
8 ask anything other than the first page and last two
9 pages, last four pages. You're welcome to look at
10 whatever you wish. Also look at Part 7 of the document
11 as well.

12 (Pause)

13 Have you had a chance to look at it?

14 A. Yes.

15 Q. This is a Form 990-PF, an IRS form for the
16 Arthur & Hadassah Marcus Foundation, correct?

17 A. Yes.

18 Q. And you have heard of Arthur and Hadassah.
19 Those are your parents?

20 A. Correct.

21 Q. And you, in fact, you were vice president

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1 of this charitable trust, at least as of 2003, when
 2 this form was -- 2004 probably, when this form was
 3 filed, correct?
 4 I direct your attention to Page 6 of the
 5 form under Roman Numeral Part VII where one, Itamar
 6 Marcus, Efrat, Israel is listed as a vice president.
 7 Do you see that?
 8 MR. YALOWITZ: Part VIII.
 9 MR. ROCHON: Thank you.
 10 THE WITNESS: Correct.
 11 BY MR. ROCHON:
 12 Q. And you, in fact, were or you were not a
 13 vice president of the Arthur & Hadassah Marcus
 14 Foundation?
 15 A. I'm listed as vice president. I'm assuming
 16 my parents had asked me if I would be vice president.
 17 I was not active and have no knowledge of anything, you
 18 know, that was done on this, you know, in fact, I
 19 didn't even remember that there was such a Foundation.
 20 Q. So you are listed as the vice president,
 21 but you did not do anything and you don't know anything

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1 about what the organization in which you were a vice
 2 president did?
 3 A. Correct.
 4 Q. All right. If you would turn to the last
 5 four pages that include handwritten entries.
 6 A. Yes.
 7 Q. The schedule of charitable gifts. Do you
 8 see that?
 9 A. Yes, I do.
 10 Q. Among the entities receiving charitable
 11 gifts, according to the form of this organization, in
 12 which you were vice president, were The Central Fund of
 13 Israel, correct?
 14 A. Correct.
 15 Q. And an entity called Orot Etzion?
 16 A. Correct.
 17 Q. On the fact that it received some
 18 charitable gifts, correct?
 19 A. Yes.
 20 Q. You are familiar with Orot Etzion being a
 21 school in the West Bank?

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1 A. I think so, yes.
 2 Q. Okay. You were also, as we previously
 3 discussed, a vice president of the Central Fund of
 4 Israel, at least for some period of time, correct?
 5 A. Correct.
 6 Q. And that is also a 501(c)(3) charity
 7 registered in New York, correct?
 8 A. Yes.
 9 Q. I think previously you did not recall when
 10 you begun with that organization?
 11 A. When I --
 12 Q. Began with Central Fund of Israel as vice
 13 president?
 14 A. Yes, I don't recall. I recall what
 15 happened that got me involved in it.
 16 Q. Okay.
 17 A. My mother notified me that there had been a
 18 contribution given to Central Fund of Israel for the
 19 purpose of distributing to -- the language -- destitute
 20 persons of the Jewish Faith in Israel. Charity was
 21 \$200,000 a year.

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1 My mother asked me if I would set up an
 2 infrastructure in Israel to help out at distribution.
 3 Which I did. I found a large number of volunteers who
 4 would be willing to figure out people who had needs in
 5 their community.
 6 And that's what started me in Central Fund.
 7 I'm assuming at some point after that, I think it was
 8 late '80s, I can check the dates for you, that was the
 9 point that I was involved.
 10 (Marcus Exhibit 448 marked for purposes of
 11 identification.)
 12 BY MR. ROCHON:
 13 Q. If you could have a look at 448. This is a
 14 copy of a Jerusalem Post article from September 27th,
 15 1989. You can look at any portion you like, but I'm
 16 going to ask you about the paragraph that's about five
 17 up from the very end of the article.
 18 A. Can I read the article?
 19 Q. Of course.
 20 (Pause)
 21 Have you had a chance to read it?

12 (Pages 42 to 45)

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1 A. Yes.

2 Q. See if this refreshes your recollection
3 that, at least as of 1989, you were the Israel Director
4 for Central Fund of Israel, correct --

5 A. Yes. It describes here what I just told
6 you, the \$200,000 a year that was coming. That I was
7 in charge of creating a framework for distribution.

8 Q. Okay. And a gentleman named Irwin Peckman
9 also served as Director of the Central Fund of Israel,
10 correct?

11 A. I have heard the name. I don't recollect
12 if I ever met him. I can't say anything about him.

13 Q. The organization also included as an
14 officer your brother, Jay?

15 A. It's possible. Again, I did what I did. I
16 wasn't involved in the administrative structures at
17 all. I don't know when my brother might have become
18 vice president.

19 My involvement was totally involved in the
20 charity distribution work and I don't know anything
21 about the administration, not about Mr. Peckman, nor

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1 know what is going on today, but in my period, if
2 someone wanted to recommend for a particular charity,
3 and it was an accepted particular charity by the
4 status, like I told you before.

5 Q. By the what status?

6 A. By the Abuta. It was recognized as an
7 abuta or whatever an educational institution, had to be
8 registered by, they could contribute.

9 Q. So, if, for instance, I wished to have,
10 give money to an Abuta in Israel, I could donate the
11 funds to the Central Fund of Israel and recommend that
12 it then direct them or give them to that abuta,
13 correct?

14 A. You could recommend it and then the
15 decisions are always in the hands of the Central Fund
16 of Israel.

17 Q. So, if I wished to do that, in other words,
18 I could get my tax deduction here in the United States
19 for charitable giving and thereby give to the overseas
20 entity, correct?

21 A. If it was a charity, yes.

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1 when my brother became a vice president.

2 Q. Let's talk about what the Central Fund of
3 Israel does a little bit more. Among the things it
4 does is collect money here, donations here in the
5 United States and then redistributes them usually in
6 Israel, correct?

7 MR. YALOWITZ: Object to the form.
8 Timeframe.

9 BY MR. ROCHON:

10 Q. You can answer the question.

11 A. Please ask it again.

12 Q. One of the things that the Central Fund of
13 Israel does is collect donations here in the United
14 States pursuant to its 501(c)(3) status and then
15 redistribute them or direct, or give them to entities
16 mostly in Israel, correct?

17 A. Again, I don't know what you mean by the
18 word "redirect". Because the organization is involved
19 with only volunteers. The volunteers all have proper
20 full-time jobs.

21 Mostly, as far as I know, again, I don't

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1 Q. And that's at least how it worked at the
2 time that you were involved in the organization?

3 A. I don't remember to what extent -- I know
4 what existed in theory at the time. How many times
5 there might have been contributions, I can't remember.
6 Like I said, the overwhelming, if not the exclusive
7 involvement, was really the charitable distribution.

8 After the 200,000 the article talks about,
9 people heard about it and people started giving us more
10 money, that's when we set up a loan fund, which I
11 mentioned, all these other different charitable
12 structures that I mentioned.

13 That's how, if there were other things, you
14 know, that was my involvement in the Central Fund.

15 Q. All right. Now when do you say your
16 involvement with Central Fund of Israel ended, Mr.
17 Marcus?

18 A. I would have to look that up. I don't
19 remember the years that I stopped, my brother started.
20 I don't remember the precise year.

21 Q. Your brother, Jay is who you are referring

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1 to?

2 A. Yes.

3 Q. You and your brother were both listed as
4 officers in the organization through 2008, isn't that
5 right?

6 A. That's what I told you. My father, for
7 whatever reason, never took my name off. Never asked
8 me and, you know, he didn't -- possibly thought it
9 might be, you know, something that I would find
10 bothersome that he took me off as vice president, a
11 person to remain as vice president.

12 In any case, he didn't take my name off,
13 even though I wasn't involved for a number of years.

14 Q. Let me just show you as an example a 990
15 Form from 2004 -- for 2004 effective 2005. I think
16 this would be 449.

17 (Marcus Exhibit 449 marked for purposes of
18 identification.)

19 BY MR. ROCHON:

20 Q. I may come back to this later. For now I'm
21 only going to ask you about the first page and the

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1 Technically my name hadn't been taken off the listing
2 as vice president, then I was a vice president. I had
3 absolutely no involvement in the organization that I
4 can remember at that time.

5 Q. So where this says "vice president" and
6 says you worked five hours a week for the organization,
7 that was false?

8 A. I would have to go back and check, I don't
9 know, my calendar for those years. I don't remember
10 being involved. And I would assume this might have
11 been an estimate my father put in just based on his
12 assumption without being certain.

13 I don't know. I certainly don't remember
14 putting in time at that point. And it was just an
15 honest mistake by my father.

16 Q. It said you worked, in essence, 250 hours a
17 year for the organization at five hours a week. Was
18 that an honest mistake or was it true? Or was it a
19 dishonest mistake?

20 MR. YALOWITZ: Objection.

21 BY MR. ROCHON:

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1 fourth page. Okay?

2 A. Yes.

3 (Pause)

4 Q. Mr. Marcus, this is Form 990 for the
5 Central Fund of Israel for 2004, correct?

6 A. Correct.

7 Q. And on Page 4 it lists a variety of
8 officers, correct?

9 A. Correct.

10 Q. Part 5. One of them is that Irwin Peckman
11 that I was asking you about earlier, correct?

12 A. Yes. I see the name is there.

13 Q. And there's also an Itamar Marcus listed
14 there with an address of Efrat, Israel?

15 A. Yes.

16 Q. And Jay Marcus listed there with an address
17 of Efrat, Israel?

18 A. Correct.

19 Q. Were you still, in fact, a vice president
20 of this organization when this document was filed?

21 A. Like I say, I was not involved.

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1 Q. The question was: Was it true, an honest
2 mistake or a dishonest mistake?

3 MR. YALOWITZ: Objection.

4 MR. ROCHON: You can answer the question.

5 THE WITNESS: I already answered it. If I
6 wasn't involved at that time, it was certainly an
7 honest mistake. My father wasn't gaining anything by
8 putting my name down as a volunteer. Was putting five
9 hours. He might have thought I still was, he might
10 have thought my brother was talking to me about issues,
11 I don't know. And he just, you know, put that down as
12 an estimate.

13 BY MR. ROCHON:

14 Q. This is not the first time you have been
15 asked questions about when your role with CFI ended, is
16 it?

17 A. Correct.

18 Q. You have been asked that in other court
19 inquiries and depositions?

20 A. In a court case, case, again, in Israel, I
21 was asked this by the Palestinian Authority lawyers, as

Page 54

1 you are asking me.

2 Q. And that was months ago?

3 A. That was, yes, a while ago.

4 Q. Have you talked to your dad about how it
5 was you were still being listed on the form despite
6 what you tell me, that you weren't actually --

7 A. When I came aware of it, I called my father
8 and I said, Dad, you know, I said, please take my name
9 off. I'm not involved, not for a while. And he took
10 my name off. In subsequent years it wasn't put on.

11 Q. Did you find out from your father how it
12 was that in 2005 you were still being listed, though
13 you are telling me that, in fact, you weren't doing
14 that much work?

15 A. The truth is, I didn't ask my father -- my
16 father is an honest person as you can get. He set
17 up, involved in this whole charity putting in many,
18 many, many hours of his own, even until today for no
19 compensation, just to assure people get their charity.

20 So it could have been sort of an
21 insignificant for him and he just made an honest

Page 55

1 mistake.

2 Q. I understand everything you say about your
3 father. My question to you wasn't whether you thought
4 your father was honest, it's whether you asked him how
5 it was that you remained on here in 2005?

6 A. No, I never did ask him that. But I
7 certainly can ask him.

8 Q. Over the years you are aware, aren't you,
9 that one of the biggest recipients of funds from the
10 Central Fund of Israel is Efrat where you live?

11 A. I have no idea.

12 Q. You have no idea whether the CFI gives
13 money to Efrat?

14 A. In the years that I was involved in Central
15 Fund of Israel, I don't think anything was going to
16 Efrat. Like I say, I have not been involved and don't
17 know where it's going.

18 Q. The thing that makes my job more difficult,
19 you say no money was going to Efrat during the years
20 you were involved, but you are not telling me when your
21 involvement stopped.

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1 MR. YALOWITZ: Is that a question? Do you
2 have a question for the witness?

3 MR. ROCHON: Can you answer the question.

4 MR. YALOWITZ: Objection. It's not a
5 question.

6 MR. ROCHON: The vehemence of the objection
7 won't be captured without a video, so you might as well
8 just say "objection."

9 Mr. Marcus, can you answer my question?

10 THE WITNESS: Just repeat it, please.

11 BY MR. ROCHON:

12 Q. Sure. The difficulty for me is that you
13 say that no money was going to Efrat during the years
14 you were working there, but you can't tell me when your
15 work with CFI stopped.

16 Can you tell me when your work with CFI
17 stopped?

18 A. Like I said, you know, I could guess. I
19 don't want to guess. I don't remember precisely. It
20 was probably even -- I just don't remember. I got
21 involved much, much too much in other work. My brother

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1 was handling it and it was really probably a more
2 slower process than from one year to the next.

3 All I can say, I can repeat, when I was
4 involved, I certainly had nothing to do with
5 transferring any money to Efrat for any project there.

6 Q. I understand you say you didn't have
7 anything to do with transferring money there. My
8 question to you that started this particular line is
9 whether you are aware that money went to Efrat. And I
10 believe you said, no?

11 A. No, you said --

12 Q. Large donations.

13 A. I'm not involved. I don't know anything
14 about it.

15 MR. YALOWITZ: I'm sorry. Is there a
16 question or are we just --

17 MR. ROCHON: The witness has stopped
18 talking and then that will be a question.

19 Can you give me a decade when your work
20 with CFI stopped? How about that?

21 THE WITNESS: I would guess it was probably

15 (Pages 54 to 57)

Page 58

1 in the early '90s.

2 BY MR. ROCHON:

3 Q. Early 1990s.

4 A. I would think. Maybe late. Again, it's an
5 estimate.

6 Q. When you referenced your brother having a
7 greater role with -- let me back up. You say your work
8 stopped in the early 1990's?

9 A. I told you, I don't remember. And you keep
10 pushing. I don't remember when I stopped. It probably
11 more petered out than, you know, today I stopped
12 working.

13 I probably continued -- I know that I was
14 involved in the distribution of the charity for a long
15 time. I told my brother at certain points, you know, I
16 can't do this. I don't have the time. He took over
17 more of a role. I took over less of a role.

18 And eventually I wasn't doing it anymore.
19 That's why there is no, I went from one date to the
20 next. Because it sort of petered out.

21 There were a number of families that I had

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1 brother in this deposition, it's a reference to Jay?

2 A. One brother and his name is Jay.

3 Q. He lives in Efrat, same place you live?

4 A. Yes.

5 Q. You said before our break that you were
6 unaware of funds going to Efrat?

7 A. No, that's not what I said. You had given
8 a large percentage --

9 Q. That's why that long pause, so that you
10 could clarify.

11 A. You had said something about a large
12 percentage. I don't know anything about the
13 percentages of money. And if I do hear about
14 something, it will be in passing, in conversation with
15 my brother about any one of the different projects that
16 CFI may be involved. It would just be in passing.

17 Q. You are aware that money from CFI goes to
18 Efrat, the place you lived, correct?

19 A. I don't think it goes to Efrat. I think
20 there are nonprofits, I'm assuming, in Efrat. I think
21 there's a medical center in Efrat and it's possible,

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1 met during that period, who I continued to give support
2 to. So theoretically I was still involved with those
3 particular families.

4 There is one Ethiopian family with eight
5 children who until today I'm not involved in Central
6 Fund, but I still collect charity money for her and I
7 bring, give that money to her regularly.

8 So, I'm saying even in that sense I'm still
9 somehow indirectly, you know, involved with this one
10 particular person, who is a recipient from Central
11 Fund.

12 But that's why there is no specific date
13 here, because it was really less and less and less
14 until my brother was taking more and more.

15 MR. YALOWITZ: Why don't we take a break.

16 MR. ROCHON: I'm fine with a break.

17 (Brief Recess) 10:13 a.m.

18 BY MR. ROCHON: 10:36 a.m.

19 Q. Back on the record, please. You mentioned
20 your brother a couple times. It doesn't matter to me
21 how many brothers you have. But when you refer to your

Page 61

1 again, this is not something I'm involved with, but if
2 my memory serves me correct, money was contributed to
3 the building of the medical center in Efrat.

4 Q. Well, you are aware that CFI has given
5 significant amounts of money to Palestinian Media
6 Watch, correct?

7 A. Correct.

8 Q. And that's the organization of which you
9 are the leader?

10 A. Yes. The money that has been contributed
11 by donors in the United States and recommended for
12 Palestinian Media Watch.

13 Q. We'll go through some of the other 990
14 Forms. This one I think should be 450.

15 (Marcus Exhibit 450 marked for purposes of
16 identification.)

17 BY MR. ROCHON:

18 Q. The Form 990 for Central Fund of Israel for
19 2000, dated, signature May of 2001. On the first page
20 of that form in Line 12 it indicates that CFI that year
21 reported total revenue of \$1.4 million, slightly over

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1 \$1.4 million, correct?

2 A. I'm not so familiar with this.

3 Q. And on Page 4 of this one you are still
4 being listed as the vice president and in this one you
5 are listed as working 15 hours a week, correct?

6 A. That's what the listing is, yes.

7 Q. So, as of this form that was for the tax
8 year 2000, you are listed as 15. And a second ago we
9 showed you the one for 2004 that said it was five hours
10 a week, correct?

11 A. Correct.

12 Q. Now, Mr. Marcus, is that consistent with
13 your father reducing your hours, as your role with the
14 organization diminished, or is your testimony that even
15 as of this tax year 2000, you had no role at CFI?

16 A. The role -- let me tell you about my role
17 in CFI.

18 Q. Your brother --

19 MR. YALOWITZ: Please don't interrupt.

20 Please don't interrupt the witness.

21 MR. ROCHON: I heard you, Counsel.

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1 MR. YALOWITZ: Please do not interrupt the
2 witness.

3 MR. ROCHON: I heard you all three times,
4 Counsel.

5 MR. YALOWITZ: You're not going to let the
6 witness answer the question.

7 BY MR. ROCHON:

8 Q. Of course, I will. But first, Mr. Marcus,
9 I understand you are going to give an answer. My
10 question to you was, as to whether this reflected a
11 diminishing role or whether you maintained that you had
12 no involvement with it as of 2000?

13 Now you say what you wish.

14 A. In the early years of CFI there were the
15 projects, there were two activities that I was involved
16 with.

17 There was the first, which was the interest
18 on this money, which was \$200,000 a year that was given
19 directly to, as was instructed, the destitute people of
20 the Jewish Faith.

21 That was through the different volunteers

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1 and different places who would give us names. And I
2 would say together with two other people every quarter
3 we would determine how to distribute the \$50,000 that
4 came in.

5 As people heard about it, there were
6 articles like the one you read, as people heard about
7 it, we got extra money. The question was what to do
8 with the extra money?

9 It was at that point we started realizing
10 that the needs of the people were more than just to get
11 money. And I became involved in initiating programs
12 like the Legal Aid program I told you about at Bar-Ilan
13 University, coordination with Bar-Ilan University.

14 There was a loan fund, free loan fund that
15 we created. There was the food distribution, I can't
16 even remember how many different projects. These
17 things took a lot of time.

18 Also involved very often, Israel at that
19 time was arresting people, sometimes for debt, and I
20 would get phone calls at all sorts of hours and would
21 have to find some lawyer who would go out and then run

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1 and try to work out deals. There was a tremendous
2 amount of involvement.

3 As time went on, I got, I gave away all
4 these extra things and I was still involved in the
5 distribution of the \$200,000 a year, meeting with the
6 two people, even phone meetings. That was the petering
7 out.

8 The year that I stopped having to do
9 200,000 I don't remember. I can look through my
10 records. So, when you ask me what does it reflect?
11 I'm just telling you that is my memory. It was less
12 and less and less.

13 My brother took more and more. What was in
14 this particular year I would have to go see if I have
15 some diaries to tell you exactly.

16 Q. Thank you. My question was based on
17 earlier answers, when you indicated that you thought
18 your role ended in the late '90s?

19 A. Yes.

20 Q. And so here we are in tax year 2000 and it
21 lists 15 hours. And we know that for tax year 2004 it

17 (Pages 62 to 65)

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1 listed five hours.

2 My question to you was, and is, does that
3 reflect that, in fact, your role was diminishing and
4 you still remained involved then or is it that you had
5 no role and your father entered your name anyway?

6 A. Like I said to you, and I'll say it again,
7 I don't remember. You press me for a decade and I said
8 the 1990's. I don't remember the year that I stopped
9 being involved in this particular transfer of the money
10 or how much involvement.

11 And since, you know, my father probably
12 made, like I said, an honest estimate based -- I wasn't
13 actually involved really directly with my father at
14 all. My father lived at that point in the United
15 States. So he, you know, he probably was estimating it
16 and I don't remember, like I said.

17 Q. Is Palestinian Media Watch an abuta?

18 A. Yes. The official name is Center for Media
19 Research.

20 Q. The organization of which you are the
21 current head and have been for a while is itself an

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1 received \$786,413, right?

2 A. Correct.

3 Q. Now you were living in Efrat in 2000,
4 weren't you?

5 A. Yes, I was.

6 Q. And are you saying that you did not know
7 that in 2000 Efrat received over half of all the money
8 that CFI received?

9 A. Absolutely no idea. In fact, I don't even
10 know what the Efrat Development Fund is.

11 Q. All right. If you could turn, please, to
12 the 5th page of this document. Page 5 and it's Roman
13 Numeral VI.

14 A. I'm sorry?

15 Q. Page 5, upper right-hand corner. Roman
16 Numeral VI. 80A, is the organization related (other
17 than by association with a statewide or nationwide
18 organization)?

19 A. I don't see. Sorry. For the calendar year
20 2000. This is Exhibit 450. Page 5. There is no -- is
21 there another Page 5? I see. Okay.

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1 abuta?

2 A. Correct. Center for Media Research is an
3 entity.

4 Q. And, if you could on that document that you
5 have in front of you, which is Exhibit -- what is the
6 number -- the front of the document, what is the
7 exhibit number?

8 A. Deposition 450.

9 Q. In 450, as you move through it, if you
10 could go to the page where the recipients of grants and
11 allocations are, the one in different font. I'm
12 showing you my version.

13 One of the recipients on that page is
14 Palestinian Media Watch, \$54,983, right?

15 A. Yes.

16 Q. As of that time, Calendar Year 2000, it was
17 your organization?

18 A. It was what?

19 Q. Your organization.

20 A. Palestinian Media Watch. Yes.

21 Q. On the next page, Efrat Development Fund

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1 Q. If you could look at 80A, I'm going to
2 start reading that question over. It reads: Is the
3 organization related (other than by association with a
4 statewide or nationwide organization) to a common
5 membership, governing bodies, trustees, officers, et
6 cetera, to any other exempt or non-exempt organization?

7 Do you see that question?

8 A. Yes, I do.

9 Q. Now the Central Fund of Israel did have
10 common officers with the Palestinian Media Watch, did
11 it not?

12 A. The truth is, this is a question you should
13 be asking Central Fund of Israel and not me. Like I
14 said, I have nothing to do with the administration. I
15 don't know what answers were given here and why these
16 answers were given. I don't know why my name was
17 there. So it's really not a question for me. This is
18 not a question about -- that I have any information
19 about.

20 Q. When you say you don't know why your name
21 was there, the reason I keep coming back to that is,

18 (Pages 66 to 69)

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1 you say you don't know when you stopped your
 2 relationship with them. So you could have still been
 3 an officer of the Central Fund of Israel in 2000,
 4 right?
 5 A. Possible. Again, you're talking about a
 6 technical term "an officer". I was not involved in any
 7 of these activities.
 8 Q. You could have still been a vice president,
 9 correct?
 10 A. I don't know. I don't know.
 11 Q. Okay. Understanding that --
 12 A. I would have to check it out.
 13 Q. Understanding that you say you don't know,
 14 my question to you was, that Palestinian Media Watch
 15 certainly had an officer, you, as one of its members,
 16 right?
 17 A. Correct.
 18 Q. And you would agree with me that on the
 19 form signed by your father you're listed as an officer
 20 of the CFI, correct?
 21 A. Yes; correct.

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1 Q. And you have admitted to me you don't know
 2 whether or not you were still an officer at CFI at that
 3 time, despite what your father said, correct?
 4 A. Correct.
 5 Q. If you were an officer of CFI at that time,
 6 this answer is incorrect?
 7 MR. YALOWITZ: Objection. Calls for a
 8 legal conclusion.
 9 BY MR. ROCHON:
 10 Q. You can answer the question of whether it's
 11 correct or not. I didn't ask you whether it was legal?
 12 I asked you whether it was correct.
 13 A. This might have been a mistake in the form.
 14 Q. And given that Palestinian Media Watch
 15 received more than 50 percent of the total amount of
 16 money received from, by the Central Fund of Israel that
 17 year --
 18 A. Palestinian Media Watch.
 19 Q. Excuse me. Efrat was the recipient of over
 20 half of the money, right, according to what document
 21 that your father submitted to the Internal Revenue

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1 Service.
 2 You would agree with me that 786,000 is
 3 more than half of 1.458 million, right?
 4 A. Right. Efrat. You ask me if Efrat
 5 received?
 6 Q. Yes.
 7 A. Let me look at the numbers. Yes. Efrat
 8 received more than half and --
 9 Q. Were you finished? I don't want to
 10 interrupt you.
 11 A. I'm trying to -- I would say in all
 12 likelihood there was just a mistake in the listing of
 13 me as a vice president. And like I said, I was not
 14 involved and wasn't aware of any of these things.
 15 Q. Your brother, Jay is also listed as an
 16 officer, correct?
 17 A. Correct.
 18 Q. And Jay also lived in Efrat with you?
 19 A. Correct.
 20 Q. And he was active in the community there,
 21 correct?

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1 A. Correct. I want to correct something that
 2 I said before. When you say that Efrat received money,
 3 Efrat didn't receive money. That is a municipality, as
 4 far as I know. It says here: Efrat Emergency Medical
 5 Fund. Efrat Ambulance Fund. Efrat Development Fund.
 6 These were, again, from what I understand of the way
 7 Central Fund works, these are people who wanted to
 8 contribute money for these funds.
 9 Medical funds are within the jurisdiction
 10 of Central Fund of Israel. And so the money went to
 11 these funds. It wasn't specifically to Efrat. It was
 12 to various projects in Efrat that people were raising
 13 money for.
 14 Q. So understanding before, when I gave the
 15 786,000 number, Efrat Development Fund, that did not
 16 include the other money that went to the Efrat
 17 Emergency Medical Fund, Efrat Ambulance Fund, right;
 18 correct?
 19 A. That is correct.
 20 Q. All right. And so what did Efrat do with
 21 the \$786,000 it got in 2000?

19 (Pages 70 to 73)

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1 A. I have no idea.

2 MR. YALOWITZ: Object to the form.

3 THE WITNESS: Like I said, I wasn't
4 involved, not in raising it, not distributing it, not
5 even aware of it.

6 BY MR. ROCHON:

7 Q. Is it a coincidence that over half of the
8 money raised by CFI that year went to the place where
9 the children of the two founders of CFI lived?

10 A. It's absolutely not a coincidence. You
11 have to understand what is happening here. There are
12 people throughout Israel, and probably throughout the
13 world, who are trying to raise money for charitable
14 purposes.

15 The people who were aware that they could
16 contribute money or raise money for projects of theirs,
17 and that there was a way to, you know, that's
18 completely recognized by American Law to get their tax
19 deductions in the United States, recommend the money,
20 would be people who knew my brother living in Efrat.

21 Central Fund of Israel doesn't do any

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1 relatively small one, correct?

2 MR. YALOWITZ: Object to the form.

3 BY MR. ROCHON:

4 Q. You can answer.

5 A. Like I say, CFI accepts donor recommended
6 funds. It is legal. It's done within the frameworks.
7 If people recommended for Efrat with their contribution
8 and then CFI checked it out and it was a worthy
9 recipient, then they would give it and fulfill the
10 donor's wishes.

11 Q. So CFI checks things out and makes sure
12 whether it's a worthy recipient?

13 A. Like I said, I know that this is not
14 something I'm involved with, but I'm sure that CFI is
15 checking this out.

16 MR. ROCHON: I would like to have this
17 marked as Defense 451.

18 THE WITNESS: And I say worthy recipient, I
19 mean with fitting the category and criteria -- I don't
20 know to the extent how -- I do not know the procedures
21 that are involved.

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1 advertising. Goes by word of mouth. And decent
2 charities are using a framework that's based in Efrat.
3 There's nothing wrong with decent charities applying
4 for recognition by Efrat and then raising the money and
5 having it contributed.

6 I would assume that other towns have
7 residents there and most of them money, or a lot of the
8 money might have gone in similar fashion. It's not
9 like Efrat is -- Central Fund of Israel was raising
10 money in general and then directing it towards.

11 This is money that was raised by people who
12 wanted this to go to these specific projects. And
13 Central Fund of Israel, when it was an accepted
14 charitable project, would give the money to that
15 organization. I think it very logical it's in Efrat.

16 Q. Thank you. There is a lot of settlements
17 in West Bank, correct?

18 A. What you call settlements. There are a lot
19 of the Jewish towns, Israeli towns in the West Bank.

20 Q. Out of all of them it turned out that in
21 Tax Year 2000, CFI donated over half its money to one

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1 (Marcus Exhibit 451 marked for purposes of
2 identification.)

3 BY MR. ROCHON:

4 Q. Take 451. When we say "my copy", these are
5 the official exhibit of the deposition. And if you
6 write on them, they are going to be part of the record
7 of the deposition. I have also given a copy, of
8 course, to your counsel.

9 Exhibit 451 is for Tax Year 2001 for CFI.
10 Correct?

11 A. Tax Year 2001.

12 Q. Once again, on Page 4 you're listed as a
13 vice president, still working 15 hours a week according
14 to the document. Correct?

15 A. Correct.

16 Q. And if you would look to the list of
17 donations, which is about three pages from the end.
18 You'll see on the left column under Amount, if you go
19 down about 12, \$22,778 to an entity called Bat Ayin.
20 Do you see that? Do you see that?

21 A. Yes, I see it.

20 (Pages 74 to 77)

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1 Q. And, if you go to the next page, you'll see
 2 about 15-17 down, \$270,906.44 for your organization
 3 PMW, correct?
 4 A. Correct.
 5 Q. And do you recall PMW receiving \$270,000 in
 6 2001 from CFI?
 7 A. PMW never set up a 501(c)(3) in the United
 8 States, because it was just saved us money and saved
 9 donor money. Donors who wanted to contribute to PMW
 10 could contribute to Central Fund of Israel, recommended
 11 and it was given, and it was passed on, as with all, I
 12 guess, assume donor recommends.
 13 Q. Thank you. My question was: Do you
 14 remember getting \$270,000 from CFI?
 15 A. I don't remember the number, but I know
 16 that all of our money from the United States came
 17 through CFI.
 18 Q. All right. Now, as to Bat Ayin, you know
 19 that Bat Ayin is a small settlement in Gush Etzion,
 20 correct?
 21 A. Correct.

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1 Q. You are familiar with the Bat Ayin
 2 Underground. I mean that you have heard of it,
 3 correct?
 4 A. If you want to refresh my memory.
 5 Q. You recall that Bat Ayin Underground was a
 6 group of extreme -- I'll refer to them as settlers but
 7 you can call them residents, if you wish -- a group
 8 from Bat Ayin, three of whom were convicted for having
 9 planted explosives in a baby carriage and leaving it
 10 outside a Palestinian school for girls, setting the
 11 timer so that it exploded at 7:25 in the morning.
 12 Do you remember that?
 13 A. I remember vaguely some of the details you
 14 are talking about, yes. I certainly don't remember the
 15 time, baby carriage, et cetera. There was -- rings a
 16 bell.
 17 Q. Okay. Let me see if I can further refresh
 18 you on that. Ask to have this marked as 452.
 19 (Marcus Exhibit 452 marked for purposes of
 20 identification.)
 21 BY MR. ROCHON:

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1 Q. This is a one-sheet article from Haaretz.
 2 See if this refreshes your recollection?
 3 A. Okay.
 4 (Pause)
 5 Okay.
 6 Q. Have you had a chance to look at that
 7 article?
 8 A. Yes.
 9 Q. All right. In fact, there was something
 10 called the Bat Ayin Underground, correct?
 11 A. I'm trying to think of the Hebrew
 12 equivalent. I remember the incident. I certainly
 13 don't remember the appeal or the towns, but I do
 14 remember there was an attempt.
 15 Q. All right. So it was a controversial
 16 incident because the individuals who were convicted of
 17 perpetrating it had planted a baby carriage outside of
 18 a Palestinian school for girls and set the timer so it
 19 would explode at 7:25 a.m., just as the girls were
 20 arriving for school?
 21 MR. YALOWITZ: Object to the form. It's a

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1 compound question.
 2 BY MR. ROCHON:
 3 Q. You can answer.
 4 A. I don't know what the question was.
 5 Q. Okay. It was a controversial incident
 6 because of the underlying facts of it, correct?
 7 A. It wasn't controversial. It was
 8 outrageous. I don't know why you say it's
 9 controversial.
 10 Q. I understand. So this outrageous incident
 11 involved, and the reason you say it's outrageous is
 12 because these three individuals from the Bat Ayin
 13 Underground had planted a baby carriage with explosives
 14 outside of a Palestinian school for girls so it would
 15 explode at 7:25 in the morning just as the girls were
 16 arriving for school, right?
 17 A. Well, that's what they were convicted of,
 18 yes.
 19 Q. Okay.
 20 MR. ROCHON: Ask this be marked as 453.
 21

21 (Pages 78 to 81)

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1 (Marcus Exhibit 453 marked for purposes of
 2 identification.)
 3 BY MR. ROCHON:
 4 Q. Mr. Marcus, one of the organizations that
 5 Central Fund of Israel collects funds for is called
 6 Honenu. Isn't that right?
 7 A. The question again.
 8 Q. One of the organizations that CFI accepts
 9 donations for is Honenu?
 10 A. What is this form you are showing me here?
 11 Q. You can put the form down and answer my
 12 question.
 13 A. I don't know anything about Honenu.
 14 Q. You have never heard of Honenu?
 15 A. No.
 16 Q. Okay. If you would look at the form that's
 17 been marked as Defendants 453, you'll see that this is
 18 from the Honenu Website and indicates that to donate to
 19 them, your check contribution, tax deductible, can be
 20 made out to Central Fund of Israel. That's what the
 21 document in front of you reflects, correct?

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1 A. I'm look at the definition Honenu providing
 2 legal aid. That's what I'm noticing. Yes.
 3 Q. Okay. Now you have not heard of Honenu
 4 before?
 5 A. No. Now that I see the name, yes, I have
 6 heard the name.
 7 Q. And, in fact, Honenu is an organization
 8 that has provided defense of those involved in the Bat
 9 Ayin Underground, isn't that right?
 10 A. I have no idea.
 11 (Marcus Exhibit 454 marked for purposes of
 12 identification.)
 13 BY MR. ROCHON:
 14 Q. You can have a look at 454, please.
 15 A. Okay.
 16 Q. Have you had a chance to look at that?
 17 A. Yes, I have read the page.
 18 Q. Okay. If you would also put in front of
 19 you 452. That's the one about the Supreme Court
 20 rejecting the appeal of the Bat Ayin Underground.
 21 You'll see that in 452 the names of the

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1 gentlemen whose appeal was rejected in connection with
 2 the booby-trapping of the carriage were, included
 3 Shlomo Dvir, Ofer Gamliel and Yarden Morag, correct?
 4 A. One second.
 5 Q. Of course.
 6 Do you see that? Those are the same
 7 individuals reflected in 454 as being represented by
 8 Honenu?
 9 A. I don't see the third name here.
 10 Q. I'll take two out of three. You see two of
 11 the names are the same?
 12 A. Yes.
 13 Q. As you can see, Mr. Marcus, CFI accepts
 14 donations for an organization that represents men who
 15 put explosives in baby carriages in order to blow up
 16 Palestinian school girls. What do you think of that?
 17 A. Like I said, I have nothing to do with CFI
 18 decisions. The fact that we are talking about a group
 19 of legal aid, I'm assuming, that they also have other
 20 things that they supply legal aid for.
 21 And I have nothing to say about the

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1 decision of CFI to support a legal aid fund. I think
 2 anyone who is on trial has a right to legal aid.
 3 That's all we are talking about here is legal aid.
 4 This isn't expressing any support for any of the
 5 actions of these people, even if the Legal Aid Society
 6 is being supported.
 7 Q. And understanding that one can always
 8 choose where to give one charitable funds, you would
 9 agree with me that there's a lot of different places
 10 you can choose to give your charity to, right?
 11 A. A person, an organization can choose where
 12 to give their funds. An organization, when there is a
 13 donor recommended contribution and they let it be known
 14 that they will check and if the organization is an
 15 abuta or whatever considerations that CFI was using, if
 16 this was a recognized abuta or whatever it was, then
 17 CFI was fulfilling the wishes of the donor.
 18 Q. Understood. So from the standpoint of CFI,
 19 and more importantly from the standpoint of Itamar
 20 Marcus, you are comfortable with the provision of funds
 21 for the defense of people, even if they have done

22 (Pages 82 to 85)

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1 something like that?

2 A. I have nothing -- when you say -- again,
3 CFI's involvement, own decisions. I have nothing to do
4 with those decisions. And if I were making a decision
5 about supporting an organization, if it was
6 specifically for the legal aid of someone who had been
7 convicted of this, I don't think I would have done it.

8 Q. Would you say that anyone who did do it
9 would have been supporting those people?

10 A. No. Someone who could support the
11 Palestinian Authority is a lawyer. Does that mean the
12 lawyer supports their actions? Ridiculous. A person
13 is entitled to legal aid and legal representation.

14 Q. Okay. And so support of those who have
15 engaged in terror acts to provide them counsel at least
16 is something with which you are comfortable?

17 A. That's not what I said. I didn't say that.
18 I said I wouldn't have done it.

19 Q. I know. You would not have given that?

20 A. That's what I said. I don't remember my
21 exact words, but, you know, someone wanted to

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1 A. Efrat Ambulance Fund.

2 Q. Yes. 303,544. And the Efrat Emergency
3 Moked Fund of \$800,000.

4 A. Correct.

5 Q. Understanding that you have told us that
6 you don't know about the specifics of CFI donations,
7 your brother Jay, who is also in CFI, and also lives in
8 Efrat, has he told you about the donations made to
9 Efrat related entities from CFI, your parents
10 501(c)(3)?

11 Mr. Marcus I'm going to withdraw. It was a
12 poorly phrased question. I'm going to withdraw it.

13 Were you aware in 2001 of these donations
14 to Efrat entities?

15 A. No.

16 Q. You are aware in 2002 that CFI provided
17 over \$2 million for the building of a security system
18 in Efrat?

19 A. I had no idea how much money was involved.
20 I knew that Efrat needed a security system and Central
21 Fund was involved. I certainly didn't know the amounts

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1 specifically give money for people who were convicted
2 of a terrorist act, I absolutely would not be involved.
3 Absolutely not.

4 Q. And the fact that Bat Ayin was receiving, a
5 place which I call settlement in -- what do you call?

6 A. It's a town.

7 Q. The fact that it was receiving funds from
8 CFI, were you aware of that?

9 A. No.

10 Q. All right. That same document 451, the tax
11 form that you have in front of you, the last one, Tax
12 Year 2001.

13 A. Yes, I have it.

14 Q. All right. In addition to the donation to
15 Bat Ayin that I have asked you about, and the donation
16 to Palestinian Media Watch that I have asked you about,
17 that document also reflects contributions to the Efrat
18 Emergency Moked Fund and the Efrat Ambulance Fund,
19 correct?

20 I'll direct you, to make your job easier,
21 on the left column near the bottom?

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1 that was involved. I certainly didn't know the
2 amounts.

3 Q. It got some controversy in Efrat whether to
4 build a security fence or not, correct?

5 A. I remember there was discussion amongst the
6 residents, if they wanted to put a security fence or if
7 there should be cameras. I do remember that
8 discussion.

9 MR. ROCHON: Ask that this be marked as
10 455.

11 (Marcus Exhibit 455 marked for purposes of
12 identification.)

13 BY MR. ROCHON:

14 Q. Mr. Marcus, I'm showing you an article from
15 the Jerusalem Post dated October 18, 2002, that relates
16 to this security fence.

17 (Pause)

18 Mr. Marcus, what this article reflects is
19 that there was a dispute among residents of Efrat, as
20 to whether to build a fence or not.

21 A. I'm about halfway through it.

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1 Q. Okay.

2 (Pause)

3 A. Okay.

4 Q. This is an article that reflects the
5 disagreement in Efrat as to whether to build a fence or
6 not?

7 A. Yes. Security system.

8 Q. You recall that dispute?

9 A. I recall that dispute. I don't remember
10 the details, which sides the people were on. I
11 remember it was a discussion.

12 Q. The article indicates that more than
13 2 million had been funneled through an organization
14 called the Central Fund of Israel for that project,
15 correct?

16 A. The article -- where does it say that?

17 Q. Bottom of Page 1 of the article. Second to
18 last paragraph on that page. It says: That the
19 \$2 million, and I quote, it was funneled through an
20 organization called the Central Fund of Israel, whose
21 Israeli representative, Jay Marcus, et cetera.

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1 Do you see that?

2 A. Correct.

3 Q. So do you recall, in fact, that the CFI
4 funneled \$2 million for this system?

5 A. Certainly, first of all, the word
6 "funneled" is, you know, the writer's word. I
7 certainly don't agree CFI funneled anything, as far as
8 I know. But I certainly was not aware of any of these,
9 neither the cost, nor anything about this.

10 Q. All right. In the article it reflects that
11 your brother was one of the people who disagreed with
12 the idea of having a fence, correct?

13 A. Yes.

14 Q. And where he says, is quoted as saying, on
15 Page 3, quote, where I grew up, fences were built
16 around the animals in the zoo, here the government put
17 the fence around the free people and let the animals
18 roam, close quote.

19 A. Yes.

20 Q. Do you see that?

21 A. Yes, I see it.

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1 Q. When he referenced the animals roaming
2 outside the fence, he's talking about the Palestinian
3 people, wasn't he?

4 A. I would assume he was talking about the
5 suicide terrorists that talked about who roamed into
6 Efrat. Suicide terrorists walked into Efrat. That's
7 what he's talking about. There is no reference to
8 Arabs here.

9 Q. There's reference to animals. I'm trying
10 to find out --

11 A. He talked about suicide terrorists, two
12 suicide terrorists had walked into Efrat. One
13 detonated inside the supermarket and miraculously only
14 the detonator exploded and not the bomb itself.
15 Another one walked in.

16 So I'm assuming that's what my brother is
17 referring to. But again, I have no idea. I'm not
18 speaking for him.

19 Q. You can't know for sure what he meant
20 without asking him?

21 A. Absolutely. But you certainly can't assume

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1 anything other than the article here was about
2 terrorists. We are talking about security from terror.
3 There is no indication here, anything about, you know,
4 and like I say, just, you know, thinking how I read the
5 article, there's nothing to think that it's referring
6 to anyone else.

7 Q. One of the concerns expressed by your
8 brother as well is that, if the fence was too close to,
9 what is referred to in the article as "the settlement",
10 that would restrict the ability of "the settlement" to
11 grow, correct?

12 A. Where do you see that?

13 Q. Well, for instance, it quotes one of the
14 residents of Efrat as saying, and this is on Page 2,
15 that she did not want to have a fence built because,
16 quote, I personally believe we should annex all of
17 Judea and Samaria. But since most people believe that
18 Gush Etzion will stay within Israel, if a deal is ever
19 made with the Palestinians, our border fence could be
20 used as the final demarcation line. Do you see what
21 that woman said?

24 (Pages 90 to 93)

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1 A. Yes, I see that quote.
 2 Q. Do you know that woman?
 3 A. Eve Harrow. Yes, I know.
 4 Q. So what Ms. Harrow wanted, one of the folks
 5 in your community is saying that, if we built this
 6 fence, it might limit how far we can grow, right?
 7 A. You are asking me to tell you what other
 8 people are thinking. I just know what she said here, a
 9 border fence could be a final demarcation line. I
 10 don't know what she was thinking at the time. It's
 11 certainly not my job to understand what Eve Harrow is
 12 thinking.
 13 Q. I'm going to move to the form for 2003, tax
 14 form 2003.
 15 (Marcus Exhibit 456 marked for purposes of
 16 identification.)
 17 BY MR. ROCHON:
 18 Q. I won't go through with you -- this is the
 19 form for 2003. You continue to be listed as an officer
 20 on Page 4, correct? Your hours are down to 5 per week
 21 according to what your father --

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1 A. Yes.
 2 Q. All right. I would like to direct your
 3 attention to on the list of recipients. There's a
 4 longer list on this one. You see where the list
 5 begins. It would be the 4th page of the list of
 6 recipients. You'll see -- I'm counting each side of
 7 the page, Mr. Marcus. So just --
 8 A. The one that starts with 2337?
 9 Q. Yes, sir. If you go down about 12 to 15,
 10 you'll see several contributions to something called
 11 Women in Green, correct?
 12 A. Yes.
 13 Q. Do you know what Women in Green is?
 14 A. Yes, I do.
 15 Q. It's an organization run by Nadia Matar?
 16 A. Correct.
 17 Q. Ms. Matar has given speeches calling for
 18 the assassination of President Abbas?
 19 A. I have no idea.
 20 MR. ROCHON: I would like to have this
 21 marked as 457.

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1 (Marcus Exhibit 457 marked for purposes of
 2 identification.)
 3 BY MR. ROCHON:
 4 Q. Here you go. This is a one-page document.
 5 (Pause)
 6 Have you had a chance to take a look at
 7 that?
 8 A. I'm reading it.
 9 Q. Okay.
 10 (Pause)
 11 A. Yes.
 12 Q. And you'll see it is reported that Ms.
 13 Matar had said: We must kill all the terrorist leaders
 14 starting with Mahmoud Abbas and all others, correct?
 15 A. Yes.
 16 Q. I understand, if this is correctly
 17 reported, that was in 2009?
 18 A. Yes.
 19 Q. And the form I'm looking at with your
 20 previously is for Tax Year 2003?
 21 A. Correct.

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1 Q. Was Ms. Matar more radical in 2009 than in
 2 2003?
 3 A. I really don't know anything -- I know her
 4 personally from Efrat. I see her, when I pass her on
 5 street. Never discuss ideology with her.
 6 Q. She resides in Efrat?
 7 A. Yes.
 8 Q. And were you aware -- you were not aware
 9 she had called for the assassination of Mahmoud Abbas?
 10 A. Now that you bring this up, I remember that
 11 there was some controversy in -- again, I wasn't --
 12 there's a lot of things that come up and are
 13 controversial. I don't remember how it was resolved,
 14 clarified if she did say it or didn't. I just remember
 15 it was discussed.
 16 Q. And you said that CFI made some kind of
 17 evaluation of who would be appropriate recipients
 18 earlier in our conversation?
 19 A. I'm sure. You have to speak to CFI to find
 20 out exactly how it's done. I know -- got to check with
 21 CFI.

25 (Pages 94 to 97)

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1 Q. All right. We see here that after asking
2 for the assassination of President Abbas, she then
3 urged the crowd to make tax deductible donations to
4 Women in Green by writing checks to the Central Fund of
5 Israel. Do you see that?

6 A. Yes, I do.

7 Q. The Central Fund of Israel, the vast
8 majority of the recipients of its funds, and we'll
9 leave aside PMW for a second, but other than PMW the
10 vast majority of the recipients reside in what would be
11 called "settlements" by those who use the term,
12 correct?

13 A. I'm not sure if that's correct. I have no
14 idea really. Let me look at this list you gave me, the
15 four-page list and I'll tell you what I get a sense of.

16 Q. Well, I'm not going to stop you from
17 looking at that list. I haven't asked you a question
18 about this one.

19 A. Abraham Fund for the Poor is a charity.
20 Old City Charities is obviously a Jerusalem charity.
21 Refuah Krovah means health should be near. Ahavat emet

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1 means lover of truth. That's probably something
2 educational.

3 I'm just going through list by list here.
4 Shifra Vepuah, I know that organization, that helps
5 women who have infertility problems. Asimchat shani
6 the joy of -- I don't know what that is. Chazon
7 pitaya, big brothers big sisters is an organization
8 that helps children who grow up with no father or
9 mother in the house by connecting them with people.

10 CFI poor funds, CFI to the poor, CFI for
11 the poor. Chasdei or zarua. Loving kindness for
12 charity. Charity for Sabat. That would mean loving
13 kindness or charity for the Zarua, charity for Sabat,
14 achason pitaya -- I don't know. Giving money to
15 guests.

16 None of these have anything to do with
17 things across the green line, the committee for -- I
18 don't know what that is. Here's a group from Efrat
19 related charities --

20 Q. Mr. Marcus, wait one second. I am
21 interrupting you. Let me just say, you would,

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1 therefore, say that it appears to you that perhaps it
2 is not the case that most of the funding goes to
3 settlements --

4 A. I can't make any statement. The money is
5 going around the -- it's to the whole range of
6 charitable purposes that it exist for.

7 Q. Thank you. Among them certainly are
8 significant amounts going to places or organizations
9 that would relate to settlements, as people use that
10 term. Understanding you don't use that term.

11 A. It's not to the settlement. It's to
12 projects of charity that might be within the
13 settlement, as far as I understand. Again, I don't
14 know, but I know, if there's a charitable recognized
15 framework within a town on both sides of the green line
16 they can, you know, apply and have recommended
17 donations contributed to them.

18 Q. Do you know if CFI makes any donations to a
19 legal or a law firm or a legal organization called,
20 Shurat Ha Din? Do you know if CFI makes any donations
21 to Shurat Ha Din?

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1 A. Could be. I mean, it rings a bell. Like I
2 say, these are all -- you see there are dozens, maybe
3 hundreds of organizations. It's not something that I
4 follow.

5 Q. Have you done work with Shurat Ha Din?

6 A. Yes, I have.

7 Q. When did you first begin working with
8 Shurat Ha Din?

9 A. A number of years ago. I can't remember
10 the exact year.

11 Q. Can you give me a decade? Was it before
12 the year 2000?

13 A. No.

14 Q. Okay. Was it before the year 2010?

15 A. I think so. Yes, probably was. Toward the
16 end of -- let me just think -- probably around there, I
17 would guess.

18 Q. Let me ask you, you said, let me remember
19 which case it was. Was the first case one in Israel or
20 one in United States?

21 A. First case was in Israel, if I remember

26 (Pages 98 to 101)

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1 correctly.

2 MR. ROCHON: All right. We have been going
3 for a little while. I'm going to take a short break
4 now for everyone. So we can go off the record.

5 (Brief Recess) 11:34 a.m.

6 BY MR. ROCHON: 11:54 a.m.

7 Q. Go back on the record. Mr. Marcus, I want
8 to turn to the methodology of PMW. At PMW you have
9 researchers who review newspapers, three newspapers
10 daily, correct?

11 A. Yes.

12 Q. Okay. Those newspapers are Al-Hayat
13 Al-Jadida, Al-Ayyam and Al-Quds. The first of those,
14 Al-Hayat Al-Jadida. I'll refer to Al-Hyat Al-Jadida
15 just as Al-Hayat just to make my life easier. All
16 right?

17 A. Yes.

18 Q. First of all, Al-Quds is located in
19 Jerusalem, correct?

20 A. Correct.

21 Q. And, therefore, it's under the security

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1 familiar, is an article that I brought in my report by
2 a Palestinian professor or lecturer from Al-Quds
3 University who says that Al-Jadida is owned by the
4 Palestinian Authority.

5 Q. Which lecturer was that? Was that Mr.
6 Nabil Khatib? You are referring to your main report or
7 Rebuttal Report?

8 A. I know it's in there. I don't remember.
9 Give me one moment.

10 Q. Page of your report?

11 A. Page 20 of the first report. Main report.

12 Q. That was a comment from Nabil Khatib?

13 A. Palestinian lecturer at BirZeit University.

14 Q. Okay. And we'll get to his report. So, as
15 we discussed, you neither speak nor read Arabic and
16 these newspapers all publish in Arabic?

17 A. Correct.

18 Q. So you have people who work underneath you
19 who review them and excerpt articles for your
20 consideration and translate them, correct?

21 A. I wouldn't define the procedures in those

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1 responsibility of Israel, not the Palestinian
2 Authority, correct?

3 A. Had no security responsibility.

4 Q. It's in the area where Israel has exclusive
5 security responsibilities, correct?

6 A. Correct.

7 Q. And where Israel exercises censorship, if
8 it wishes, correct?

9 A. Yes.

10 Q. And Al-Quds is privately owned.

11 A. Yes.

12 Q. Al-Ayyam is also privately owned, correct?

13 A. Correct.

14 Q. All right. Al-Hayat has substantial PA
15 ownership, correct?

16 A. Yes.

17 Q. But not complete?

18 A. I have read articles by Palestinians that
19 have said they own it. Mostly own it. So I'm not
20 going to argue with the statement that it is mostly
21 owned, completely owned. I'm not particularly

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1 terms. The procedures that we follow, we have a series
2 of translators. One of them right now is Arabic,
3 language is her mother tongue from Egypt. The others
4 are experts from Israel and they read the newspapers
5 and watch Palestinian television on a daily basis. The
6 television is not watched live. It's watched from DVDs
7 and recordings that we have.

8 And toward the end of the day we have a
9 meeting, we try to do it most days, we don't usually
10 get to it most days. We have a meeting where we'll get
11 a review from the various researchers, what they found,
12 what they saw, what's important.

13 We get a sense of what is happening in the
14 Palestinian leaderships directive, what's going on with
15 Palestinian leadership, what activities they are
16 having.

17 And based on that I will then, either I or
18 an associate of mine, will give instructions what to do
19 final precise translations on.

20 Q. Okay. So we are clear, when you say they
21 look at what the Palestinian leadership is doing and

27 (Pages 102 to 105)

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1 the activities, that's based on what they read in these
2 three newspapers we mentioned, right?

3 A. Not exclusively.

4 Q. Well, where in your report does it describe
5 them --

6 A. You are talking in the present. The
7 present we do websites and Facebook pages that are
8 connected that have official Facebook pages. So you're
9 talking in the present, I'm telling you in the present,
10 it's not exclusively those three. There are many other
11 sources that we can look at.

12 Q. The sources that are referenced, the print
13 sources that are referenced in your report that your
14 researchers look at are the three newspapers that we
15 just spoke about, correct?

16 MR. YALOWITZ: I'm sorry. Can I hear the
17 question back.

18 BY MR. ROCHON:

19 Q. I'll rephrase it. The print sources in
20 your report upon which you rely are these three
21 newspapers that we have been talking about, correct?

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1 A. I can't right now think of any others. But
2 if there's something I have quoted from another source,
3 it's possible. I know on occasion, when there should
4 be, in fact, there is, as far as I remember, if there's
5 a statement that might be said by a Palestinian leader
6 in a different Arabic language newspaper, that's a
7 respectable newspaper, and we can trust the source,
8 then we would cite that as well. We use that in our
9 search as well. But it wasn't a systematic researching
10 of all the other newspapers.

11 Q. All right. So those other sources would
12 have to be drawn to your attention or your researchers
13 attention?

14 A. Correct.

15 Q. And you said they would have to come from a
16 respectable newspaper?

17 A. Correct.

18 Q. Would you consider these three newspapers
19 we are talking about that are the principal basis for
20 your reliance on print media to be respectable?

21 A. I don't even want to grade them. I'm

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1 talking about them, I said if we found another source.
2 These are Palestinian papers. Al-Quds, even though it
3 is privately owned and within Israel, in Jerusalem,
4 it's seen by Palestinians as a Palestinian paper. So
5 we study that as well.

6 If it were an outside source, we
7 wouldn't -- there have been -- I can't think of any
8 offhand, but I know there have been times when we have
9 seen statements attributed to one leader or another
10 from a source we didn't know was reliable, we just
11 ignored it.

12 Q. In this report of yours you do not rely on
13 any other print media other than Al-Hayat, Al-Ayyam or
14 Al-Quds, do you?

15 A. I don't think so, but I would have to look
16 through -- there might be another source or two in
17 there. I cannot remember.

18 Q. In terms of the procedure that your people
19 engage in after you have this meeting where things are
20 discussed, you then direct which articles will be
21 translated?

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1 A. Fully translated, yes. There is a
2 preliminary translation that's done. It then has to go
3 through a second translation and then it has to be
4 translated to English, verified, there is a whole
5 security procedure, I say security, securing the
6 precision of the translation that we go through that
7 happens after this initial meeting.

8 Q. And would you agree with me that in your
9 report you cite Al-Hayat more than you do Al-Ayyam or
10 Al-Quds?

11 A. Yes.

12 Q. Do you know the precise numbers?

13 A. In my report?

14 Q. Yes.

15 A. No.

16 Q. Isn't it a fact you cite Al-Hayat 34 times,
17 Al-Ayyam 11 times and Al-Quds 9 times?

18 A. If you would like, I'll read through it now
19 and count them. But it would be natural for us to cite
20 Al-Hayat more because it was the paper either partially
21 or completely owned by the Palestinian Authority.

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1 Q. And a lot of the work --
 2 MR. YALOWITZ: Would you like him to count?
 3 BY MR. ROCHON:
 4 Q. I may have him do it later. I actually
 5 have a version of the report that highlights them to
 6 make it easier for him to do so. We may show that to
 7 him later or maybe even at lunch. We'll see. But
 8 thank you.
 9 MR. YALOWITZ: We won't be doing it during
 10 the lunch break.
 11 MR. ROCHON: Thank you again.
 12 MR. YALOWITZ: Of course.
 13 BY MR. ROCHON:
 14 Q. A lot of what PMW was sort of designed to
 15 do was to evaluate where, based on your work, you
 16 thought the attitudes were of the Palestinian
 17 leadership regarding peace process, terror, et cetera,
 18 correct?
 19 A. Just read that again. Since I'm defining
 20 PMW, I want to hear exactly what you said again.
 21 Q. Sure. So a lot of, as far as why your

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1 organization was set up was to try to evaluate what the
 2 thinking was of the Palestinian leadership regarding
 3 peace process, terror resistance, whatever you want to
 4 call it?
 5 A. Basically we define it as looking at what's
 6 happening in Palestinian society that are promoting
 7 peace and/or impediment to peace. And publicize the
 8 items that promotes peace, to reinforce it and
 9 publicize the impediments to peace so they can
 10 hopefully be eliminated.
 11 Q. You don't rely on your work for PMW or in
 12 your report on any intelligence sources, do you?
 13 A. Correct, we don't.
 14 Q. I should have been more careful in my
 15 question. I meant Israeli intelligence sources. You
 16 don't rely on any of them, do you?
 17 A. We don't.
 18 Q. From any country. Not the United States,
 19 not Palestine, not Israel, right?
 20 MR. YALOWITZ: Object to the form.
 21 BY MR. ROCHON:

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1 Q. You can answer the question.
 2 A. I have -- there was one time when we read
 3 through an American intelligence translation of
 4 something that we had translated.
 5 Q. I apologize for interrupting you. Were you
 6 done?
 7 A. But aside from that I can't remember, there
 8 might be something. We systematically don't have any
 9 contact with any intelligence service.
 10 Q. Whatever you read in some American
 11 intelligence assessment isn't reflected or relied upon
 12 in this report?
 13 A. No.
 14 Q. Okay. You are aware, now at least, of the
 15 fact that Al-Hayat had during the Second Intifada a
 16 relatively small readership, correct?
 17 A. Yes.
 18 Q. And, in fact, you mentioned that you
 19 testified recently in Israel, and that was in
 20 connection with the Gilad Zer case, correct.
 21 A. I testified a few years ago.

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1 Q. And you are aware that the readership of
 2 Al-Hayat in the period of the Second Intifada in terms
 3 of the circulation of the newspaper was 5,000 or less,
 4 correct?
 5 A. Seems reasonable. I don't remember the
 6 exact figure but that seems reasonable.
 7 Q. Obviously one can't tell whether a
 8 newspaper is read just because it's been circulated,
 9 right?
 10 A. Well, you don't know how many people may
 11 have read it just because it was circulated. It may be
 12 passed on.
 13 Q. It may have been passed on more, it may not
 14 have been read at all. One never knows, right?
 15 A. Correct.
 16 Q. That's why they sometimes call newspapers
 17 here fish wrap. You have heard that term?
 18 A. Yes, I have.
 19 Q. And, as we earlier discussed, we certainly
 20 can't say if anything printed in those newspapers, any
 21 of the three, was read by any of the people involved

29 (Pages 110 to 113)

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1 allegedly in the incidents here in this Sokolow case,
 2 right?
 3 A. Correct.
 4 Q. If your translators in the course of their
 5 work day-to-day come across something that they don't
 6 think is relevant, obviously you won't know about it.
 7 Unless they raise it to you, you wouldn't know about
 8 it, right?
 9 A. Correct. I think about 30 topics that my
 10 translators are supposed to bring to our attention. I
 11 don't have the exact number right now because it
 12 varies, goes up and down depending on what's important
 13 at a particular time.
 14 Q. I'm focusing obviously the first on the
 15 newspapers. We will get to the TV media as well. But
 16 based on what you're given by way of translation, you
 17 then make -- you get a rough translation and then you
 18 make an assessment of what ought to be finally
 19 translated, right?
 20 A. Yes.
 21 Q. And then, based on that you make whatever

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1 killed, martyred, whatever expression you want to use,
 2 you wouldn't go talk to the mother?
 3 A. No.
 4 Q. Nor do your associates, your researchers,
 5 whatever you want to call them, go talk to those
 6 people, right?
 7 A. No, we don't.
 8 Q. They rely on whatever is in the newspaper
 9 story or TV clip, right?
 10 A. Correct.
 11 Q. In the course of the work, therefore,
 12 frequently in reaching your conclusions you interpret
 13 what you think a person meant when they said something,
 14 don't you?
 15 A. I'm sorry. Repeat that.
 16 Q. Sure. I'll start over. In your work and
 17 in connection with this report, you frequently have to
 18 interpret what someone meant, correct?
 19 A. I don't think so. There might be occasions
 20 where within the context, but I think the overwhelming
 21 majority of cases we are not dealing with

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1 interpretations or analyses of what you have been
 2 given?
 3 A. Correct. I would say not just based on
 4 that. Based on the whole range of the meeting.
 5 Q. With your --
 6 A. With my staff. It's not just the things we
 7 get a final translation. We get a sense -- one of the
 8 considerations is just the time consideration. Ideally
 9 everything that they find would get double translation.
 10 There's a time consideration, opinions and sense and
 11 atmospheres and what's happening in the Palestinian
 12 World can all be -- is all important and helps get a
 13 sense of what's going on.
 14 Q. It's not part of your process in connection
 15 with preparing this report to have, once you have
 16 received a particular article, to go back and interview
 17 the speaker, whoever was quoted in it, if someone was
 18 quoted, right?
 19 A. That is correct.
 20 Q. So if there was an article which purported
 21 to describe what was said by a mother of someone who is

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1 interpretation but straightforward messaging.
 2 Q. Well, for instance, you say that resistance
 3 is synonymous or equal to violence on Page 29 of your
 4 report, don't you?
 5 A. Hang on a second. Which item here?
 6 Q. Just so we are clear. The third paragraph
 7 you're quoting something from Al-Hayat from January 13,
 8 2001, referenced as Exhibit 13. And you quote that
 9 Marwan Barghouti said: Negotiation without resistance,
 10 and then in parentheses it says, i.e. violence.
 11 A. I.e. is our addition.
 12 Q. So there he said "resistance". You said
 13 "violence", right?
 14 A. That's not an interpretation. In this
 15 case, it's not an interpretation. The term
 16 "resistance", the way it was used during this period,
 17 certainly by someone like a Marwan Barghouti, who later
 18 on eventually was convicted of the being involved in
 19 serving five life sentences for murder of Israelis.
 20 The way he used the word "resistance", the
 21 overwhelming majority, there could have been other uses

30 (Pages 114 to 117)

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1 at the time. And if there was a usage of the word
2 "resistance" that could be interpreted in different
3 ways other than violence, we wouldn't have added the
4 parenthesis, i.e. violence.

5 Here the meaning of the word "resistance"
6 in this context is not an interpretation. We just
7 translated literally that it means violent resistance.

8 And what he's saying here, this is a
9 message that comes through and regularly in Palestinian
10 society even today, that negotiations have to be
11 accompanied, or political process has to be accompanied
12 by some kind of a violence to keep it moving, to put
13 pressure on Israel.

14 That's what he is saying here. This is not
15 interpretation. That's what he's saying. And I would
16 say that is what 100 percent of Palestinian who read
17 this would have interpreted.

18 Q. Now, if I were to say that what you just
19 did was spin, that would be me interpreting what you
20 just said, right?

21 A. I don't know what you mean by "spin"?

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1 Q. I mean, you know, playing with the facts in
2 order to try to give me a good answer. If I called
3 that "spin", that would be me interpreting what you
4 said, right?

5 MR. YALOWITZ: Object to the form.
6 BY MR. ROCHON:

7 Q. Right?

8 A. No, you are not interpreting what I said.
9 You're denying what I said.

10 Q. When I say to you right now that resistance
11 is a right of the Palestinians to fight the occupation,
12 I just said that, did I mean violence?

13 A. You, in the context of 2013, not
14 necessarily, because in recent years they have started
15 talking about different kinds of resistance. They
16 added the word "suamia", which would mean peaceful
17 resistance, "shbia" would mean popular resistance.

18 These are terms that are coming up today
19 because there's a debate, or there has been an
20 evolution. In this period of time I don't even think
21 those terms even existed.

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1 The fact that they have to add the words
2 "suamia" and "shbia", again, which means peaceful or
3 popular resistance, is an indicator that at this
4 period, we are talking that's what resistance meant by,
5 in this context here, by Marwan Barghouti and certainly
6 when he emphasized the need to continue the Intifada.
7 That is not interpretation. That's what he's saying.
8 That was the meaning of the word "resistance" at the
9 time.

10 Q. So it's possible and you don't know -- you
11 don't know whether the addition of those words to the
12 resistance for peaceful or popular is because earlier
13 Palestinians understood resistance meant violence or
14 because people like you had misinterpreted it as
15 violence and they wanted to be clear now that that's
16 not what they mean. You don't know, do you?

17 A. I completely don't agree with that
18 statement. I can even give you examples from Hamas.
19 Hamas very often in its articles talks about itself, it
20 just talks about the resistance.

21 It's not talking about -- they just use

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1 that term and they are referring to, of course,
2 different things in the Palestinian Authority, I don't
3 know if the Palestinian Authority would call them that.

4 But in this context here there is no
5 doubt -- and again, there's not interpretation. That
6 was the meaning of the word at that time and in this
7 place.

8 Q. If that's so clear, why didn't you just
9 leave it as resistance and leave out, i.e., violence?

10 A. What was considered -- what was actually
11 considered was to put the words in negotiations without
12 armed resistance. Because that is what is implied
13 here.

14 That's what is being said here.
15 Negotiations without armed resistance. I could find
16 many, many, many examples where it's even more explicit
17 than this, that the term resistance means, during that
18 period the term resistance meant armed resistance.

19 This is being overly conservative because
20 we could have put, and I would have been very confident
21 that we were accurate just saying negotiations without

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1 armed resistance.

2 Q. So even though Mr. Barghouti would not have
3 said "armed"?

4 A. He didn't have to.

5 Q. Let me finish. Even though Mr. Barghouti
6 did not say "armed resistance" or "violence", you're
7 comfortable assigning either the word "armed" or
8 "violence" to the word "resistance", right?

9 A. I'm disagreeing that he didn't say "armed
10 resistance". When he said "resistance", he's saying in
11 this context armed resistance, especially the end of it
12 is, he emphasized a need to continue the Intifada.

13 Q. So you just said, when he says resistance,
14 he's saying armed resistance. Even though he didn't
15 say that?

16 A. The word "resistance" -- the word
17 "resistance" in this usage here meant the use of, you
18 know, the use of violence and arms against Israel.
19 That's what he went. And everybody understood that.

20 Q. When you say "everybody understood that"?

21 A. Palestinians would be reading this. I

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1 would be confident in saying, would understand that's
2 what is being said.

3 Q. Now we spent most of this morning talking
4 about your inability to interpret what Mr. Kerry meant
5 when he said "settlements are illegitimate". And you
6 explained you couldn't get inside his head to know what
7 he meant, right?

8 A. Correct.

9 Q. And even though she was your neighbor, the
10 woman who said --

11 A. Not my neighbor. She lives in Efrat.

12 Q. You have seen her and you know her. That
13 woman who said Abbas should be assassinated, you think
14 she meant she wanted him killed?

15 A. I told you, I don't know anything about
16 that statement. I don't even know if it was accurate.
17 It was reported wherever it was reported. I don't know
18 anything about that statement.

19 Q. And when you said that your brother's
20 reference to keeping the animals outside the fence, you
21 don't know what he meant, do you? Whether he meant

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1 people, terrorists or animals? You don't know, do you?

2 A. No. No, no. I said to you that the
3 context of the whole article was about terrorists.

4 Q. But you told me you don't know what he --

5 A. Of course.

6 Q. No one knows what other people mean, right?

7 A. That's right. This is not a question of
8 meaning here. I'm telling you the meaning of the word
9 "resistance" at the time. And that's the difference.

10 This is not a vague reference to something else. He's
11 saying negotiations without resistance.

12 What does it mean, resistance? It is
13 humiliating and begging. If we just negotiate and
14 don't have the armed wing continuing, that is
15 humiliating and begging. That is what he meant. That
16 is the meaning of the word in this context.

17 Q. Resistance in this context means violence,
18 and you know this?

19 A. Yes.

20 Q. And everybody in the West Bank would have
21 known this, according to you?

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1 A. Yes.

2 Q. And you know this without having spoken to
3 anyone in the West Bank who heard the words, right?
4 Right?

5 A. Yes.

6 Q. Without talking to the hearers, right?

7 A. I know it from the context that this word
8 is used during that period.

9 Q. You actually have said in your report that:
10 Intifada is synonymous with killing civilians. Right?

11 A. Can you show me where that is, please.

12 Q. Yes. It's on Page 23 of your report.
13 You'll see in the middle of the page, the paragraph
14 that begins: A clear understanding. Do you see that?
15 You say there that Intifada was synonymous with acts of
16 killing civilians.

17 A. What I said there is following. And you
18 are taking only part of my statement. Palestinians use
19 the term Intifada referring to violent attacks within
20 Israel, the West Bank, the Gaza Strip, against Israeli
21 civilians --

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1 Q. Slow down. Tell us where you are reading.

2 A. Paragraph earlier.

3 Q. Same paragraph on Page 23. And read slow
4 so Mr. Bennett can take down what you say.

5 A. Literally the word "Intifada" in Arabic
6 translates as shaking or shaking off. However, the
7 Palestinians have given the term particular meaning
8 referring to their violent attacks within Israel, the
9 West Bank and Gaza Strip, against Israeli civilians and
10 military.

11 This included the full range of violence
12 from youths throwing stones at Israeli cars, to
13 drive-by shootings and to suicide bombings on buses,
14 restaurants, pita shops and in malls that eventually
15 killed over 1,000 Israeli civilians.

16 The clear understanding that Intifada was
17 synonymous with acts of killing civilians can be seen
18 from Marwan Barghouti. That statement is a
19 continuation, and possibly I should have put the word
20 also, synonomous. Because clearly I'm saying it's not
21 only acts of killing civilians. I said it includes the

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1 And that is what I'm saying here. The term
2 "Intifada" refer to the whole gamut. It didn't refer
3 to a specific item. It referred to the whole, you
4 know, what Mahmoud Abbas later on called the war that
5 was going on. It included killing.

6 Q. All right. Now so let me see if I can get
7 you to agree with this. You're telling me it included
8 killing, therefore, however, it also included other
9 things, correct?

10 A. Again, you are trying to break it down into
11 little parts. I'm saying it included this whole --
12 it's like saying we are fighting a war. Well, did the
13 war include intelligence, did the war include messages,
14 did it include phone calls?

15 Well then war is, therefore, is phone
16 calls. War isn't phone calls. War is the totality of
17 the violence and the support system for it. That is
18 what the word "intifada", it is not broken down into a
19 little tiny category. In this period he's referring to
20 the whole totality of the effort of Intifada.

21 Q. If I said war includes phone calls, you

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1 full range of violence from throwing stones, drive-by
2 shootings, suicide bombings.

3 Q. So you would agree with me, wouldn't you,
4 that because in the paragraph before the synonymous
5 phrase is used, you said that, according to you,
6 Intifada included throwing stones, right?

7 A. Yes.

8 Q. Therefore, you would agree with me that
9 Intifada was not synonymous with acts of killing
10 civilians, was it?

11 A. The word "Intifada", and that's what I
12 meant over here, included the full range of violence,
13 isn't broken up into little parts. This was stone
14 throwing.

15 The Intifada, the Al-Aqsa Intifada during
16 this period was referring to the whole totality of
17 violence, which included killing. If someone at this
18 time says, like Barghouti, since the beginning of the
19 Intifada 66 have been killed, and that's a good count,
20 it is clear that he is saying that Intifada is also
21 synonymous with killing Israelis.

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1 would know what I meant. If I said war is synonymous
2 with phone calls, you would say I'm a horse's ass,
3 wouldn't you?

4 A. Correct.

5 Q. So Intifada, you would agree with me, you'd
6 like to change your report to say Intifada included
7 acts of killing civilians, as opposed to saying it is
8 synonomous with acts of killing civilians, right?

9 A. I would say, I wouldn't change it that way.
10 I would say the clear understanding of Intifada was
11 also used to be synonymous with acts of killing.
12 Because that's the example here where Intifada was used
13 to define the act of killing 66 Israelis.

14 The clear understanding of Intifada was
15 synonomous, was also synonomous with the acts of
16 killing, if you want. That is what is being said here.

17 Q. "Synonomous" means same as, right?

18 A. "Synonomous" means same as.

19 Q. Right. So Intifada has never meant only
20 killing civilians. You are telling me that it included
21 that. In fact, the paragraph before you are saying it

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1 included stones.

2 The reason we are having this interesting
3 discussion is the word "synonomous."

4 A. Right. What I'm saying in this particular
5 case here, when Marwan Barghouti was using the word
6 "Intifada", in this case it was synonomous with the act
7 of killing. That's what I'm saying here. Maybe the
8 wording should have been different but the word
9 "synonomous" in this particular case is correct.

10 Intifada -- the word "Intifada" was also
11 used as synonomous with acts of killing. He said since
12 the beginning of the Intifada 66 have been killed, and
13 that's a good count. I don't know how you would
14 interpret it differently.

15 Q. It doesn't say "civilians", does it?

16 A. Where?

17 Q. What Mr. Barghouti supposedly said
18 according to Al-Hayat, right?

19 A. Right.

20 Q. And, in fact, if we look at your citation,
21 this is something that was reported supposedly by a

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1 Q. Is that in Arabic, English or something --

2 A. I don't remember.

3 Q. So at some point, what we can figure out
4 from this is that somebody supposedly spoke to this
5 man, Marwan Barghouti. It was reported in Al-Sharq in
6 some language and then reported in Arabic in Al-Hayat
7 and then translated and then quoted here by you?

8 MR. YALOWITZ: Object to form.

9 BY MR. ROCHON:

10 Q. Right?

11 MR. YALOWITZ: You can answer.

12 BY MR. ROCHON:

13 Q. Right?

14 A. I'm sorry. I was looking at the words and
15 I missed your question.

16 Q. That's okay. I want to see if we can
17 understand how this ends up in your report and then
18 interpreted. It starts, supposedly, with someone
19 talking to this man, Barghouti?

20 MR. YALOWITZ: Object to form.

21 A. Interviewing.

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1 newspaper called Al-Sharq Al-Awsat and then reprinted
2 in Al-Hayat?

3 A. Yes.

4 Q. So, if I can figure out what it is we are
5 relying on for Intifada being synonomous with killing,
6 it's that apparently somebody claims to have spoken to
7 Marwan Barghouti. It was reported in one newspaper.
8 It was supposedly reprinted in another newspaper and
9 then it was interpreted by you, right?

10 MR. YALOWITZ: Object to form.

11 BY MR. ROCHON:

12 Q. I withdraw the question, because I missed
13 an important part of it. This was originally printed
14 in Arabic or English?

15 A. I would assume, from my memory it was in
16 Arabic.

17 Q. In al-Hayat it was in Arabic?

18 A. Yes.

19 Q. Do you know how it was reported in Al-Sharq
20 Al-Awsat?

21 A. I do not remember.

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1 BY MR. ROCHON:

2 Q. Interviewing is your word. That involves
3 talking, right?

4 A. Correct.

5 Q. Do you have any reason to believe it was a
6 printed communication, they were exchanging notes?

7 A. I would have to look back in the original
8 article and see how it exists there. I would also like
9 to look at Exhibits A and B. We might have included, I
10 don't remember.

11 Q. All right. Look at whatever you want to
12 look at. What I'm asking you is --

13 MR. YALOWITZ: Do you have Exhibits 7A and
14 7B for the witness?

15 MR. ROCHON: No.

16 THE WITNESS: Can I take a moment to check
17 them?

18 BY MR. ROCHON:

19 Q. Did you bring them?

20 A. I didn't -- I might be able to find them on
21 my laptop.

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1 Q. I'm not asking you to look at them. If you
2 want to look at them later, you can do that on your own
3 time.

4 MR. YALOWITZ: You are asking the witness
5 questions about the origin and circumstances of the
6 quotations. I think it's only fair to show, either
7 show the witness -- well, the record will be what it
8 is.

9 I think you should show the witness the
10 documents. But it's your deposition. Do it how you
11 want.

12 BY MR. ROCHON:

13 Q. Thanks. So what does it purport to be, and
14 you call it an interview of Marwan Barghouti?

15 MR. YALOWITZ: Objection.

16 BY MR. ROCHON:

17 Q. Your report says it's an interview, right?

18 MR. YALOWITZ: Objection.

19 MR. ROCHON: Basis?

20 MR. YALOWITZ: You are not letting the
21 witness see the document. You are asking him questions

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1 that in a moment, if you like?

2 Q. I'm not even asking you to guess English or
3 Arabic. I'm saying, then it ends up in Al-Hayat.
4 Certainly in Arabic by that point?

5 A. Can I point something out about this here?

6 Q. You can after I'm done asking my question.

7 A. Okay. Go ahead.

8 Q. Don't forget it. And then it's translated
9 and then it's interpreted by you?

10 MR. YALOWITZ: Objection.

11 BY MR. ROCHON:

12 Q. Isn't that right?

13 MR. YALOWITZ: Objection.

14 BY MR. ROCHON:

15 Q. Go ahead and answer.

16 MR. YALOWITZ: Objection. Compound
17 question.

18 MR. ROCHON: Three objections. You
19 actually get a prize for three in a row.

20 Go ahead, answer.

21 THE WITNESS: This is translated.

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1 about it and you are not letting him see the document.

2 BY MR. ROCHON:

3 Q. Page 23 of your report that is sitting in
4 front of you says that it was an interview with Marwan
5 Barghouti, right?

6 A. Correct.

7 Q. That's right there. Those are your words,
8 right?

9 A. Yes.

10 Q. All right. And this interview was not
11 heard by you, right?

12 A. Correct.

13 Q. It was, according to you, in this report,
14 Page 23, originally in something called Al-Sharq
15 Al-Awsat?

16 A. Yes.

17 Q. That was reprinted in Al-Hayat, right?

18 A. Yes.

19 Q. Therefore, in Arabic, right?

20 A. I'm assuming that Al-Sharq Al-Awsat was
21 also in Arabic. I can't say for sure. I can check

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1 BY MR. ROCHON:

2 Q. And interpreted by you. Isn't that right?

3 A. No. There's a description of what is being
4 said. It's not an interpretation. It's a description.

5 Q. Well, you cite this as the basis for a
6 clear understanding that Intifada was synonymous with
7 acts of killing civilians, right?

8 A. Like I said, the word "intifada" could also
9 be synonymous specifically with the acts of killing.
10 And I said it explicitly that it's more general. It
11 includes a totality of activities during this period
12 were called the Intifada.

13 Q. He didn't say civilians. That's how we
14 ended up here, did he?

15 A. No, he didn't.

16 Q. Okay. He said that 66 have been killed, if
17 this was quoted and translated correctly, right?

18 A. Correct.

19 Q. And you said it's synonymous with killing
20 civilians, even though he did not say that the Intifada
21 included 66 civilians being killed, right?

35 (Pages 134 to 137)

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1 A. And as I said, again, the Intifada was also
2 synonymous with the act of killing civilians.
3 Otherwise, he would have said we killed "X" number of
4 soldiers. The fact he's including civilians in the
5 count meant that civilians were a legitimate target in
6 the Intifada.

7 Q. You're telling the reader of this, and you
8 are offering an expert opinion that Intifada is
9 synonymous with killing civilians. You are offering
10 that as your opinion here, I guess?

11 MR. YALOWITZ: Object to the form.

12 THE WITNESS: It's not what I said. I told
13 you exactly what I meant by it. It was also used to
14 include the act of killing civilians.

15 BY MR. ROCHON:

16 Q. So someone could say Intifada, you would
17 agree with me, and not mean killing of civilians,
18 right?

19 A. Give me the sentence.

20 Q. The Intifada should continue. Uttered in
21 2001.

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1 A. It absolutely, if you said it in 2001, it
2 meant to include the killing of civilians.

3 Q. How many people killed were civilians?

4 A. I don't know the exact number.

5 Q. How many suicide attacks were there in
6 2001?

7 A. I also don't know the exact number.

8 Q. This statement is made in March 1, 2001,
9 right? Right? Supposedly?

10 A. Yes.

11 Q. At least that's when it was printed. It
12 was reprinted March 1, wasn't it?

13 A. Yes.

14 Q. You don't know from your report at least,
15 when the interview occurred?

16 A. Correct. It was March 1st.

17 Q. That's when it was printed. From your
18 report we don't know when he was interviewed, do we?

19 A. No.

20 Q. As of March 1st, 2001, assuming even that
21 it was close in time to that, how many civilians, as

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1 opposed to soldiers, had been killed?

2 A. I don't remember offhand. You have to look
3 it up.

4 Q. What rough percentage would you say were
5 civilians?

6 A. I don't remember. I don't remember.

7 Q. Well, when you wrote this report and signed
8 it for use in this Court proceeding in March of this
9 year, a few months ago, did you know then? The last
10 page has the date March 22 --

11 A. Yes.

12 Q. Did you know then how many, as of
13 March 1st, 2001, civilians had been killed?

14 A. I don't remember if I had a specific
15 number.

16 Q. You don't know if it was more civilians
17 than soldiers?

18 A. I would have to check this out.

19 Q. When you signed this thing in March of
20 2013, did you know then?

21 A. I probably had reason to think that, yes,

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1 definitely.

2 Q. Do you think you gave it any thought for
3 real?

4 A. Did I give it any thought?

5 Q. Yes. As to what the numbers were.

6 A. I'm sure I did.

7 Q. And when you gave it thought, and you are
8 sure you gave it thought, what did you think?

9 A. I think exactly what it says, that they
10 were mostly civilians.

11 Q. Did he know that? "He" means Mr.
12 Barghouti. Did he know that?

13 A. At the time, I'm sure. People were aware
14 of what was going on at the time.

15 Q. So on March 1st, 2001, if his interview
16 occurred then, you're able to tell me that he knew what
17 number of the 66 Israelis were civilians and which
18 number were soldiers?

19 A. I don't know if he knew the precise number.

20 Q. Okay. So when he said 66 were killed, you
21 don't know if he meant civilians, soldiers or people,

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1 do you? Or Israeli people.

2 A. That's right. He meant Israeli people.

3 Q. He did not mean Israeli civilians, did he?

4 A. He did not -- he meant Israelis, correct.

5 Q. How do you know that? Because I got you to
6 say it? Looking inside his head now?

7 A. The Intifada was targeting Israelis. The
8 Intifada was targeting Israeli soldiers and civilians.

9 Q. So, therefore, if it was targeting Israeli
10 soldiers and civilians, when you say up above that it
11 was synonymous with acts of killing civilians, you only
12 mean that it included that. You don't mean that it was
13 synonymous, meant the same as; do you?

14 MR. YALOWITZ: Object to form. Compound.
15 Badgering the witness. We have been over this.

16 Objection. It's an objectionable question. You can
17 answer, if you can.

18 BY MR. ROCHON:

19 Q. Answer the question, please. And don't
20 instruct the witness.

21 MR. YALOWITZ: I'll say whatever I think I

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1 A. I don't know.

2 Q. You mentioned earlier Dr. Khatib. Remember
3 that you referenced and turned my attention to his
4 report. I think that was on Page 20, when you drew my
5 attention to Dr. Khatib earlier in the deposition.

6 Yes, it was. Turn to Page 20 of your initial report.

7 And that's the -- you reminded me that
8 that's the person you mentioned his lecture, right.

9 Now you are aware that this Dr. Khatib that
10 you rely on in the source of material that you rely
11 upon said that newspapers simply were not widely
12 available during the Second Intifada. Correct?

13 A. I'm not familiar with that. But it's
14 something that I was -- again, we talked numbers
15 before, 5,000 readership.

16 Q. And according to Dr. Khatib, who you rely
17 on, at that time the population, and his lecture you
18 rely upon is from February 7th or 8th of 2003, right?

19 A. February 2003, correct.

20 Q. He said there was a population of about 3
21 and a half million at that time, correct?

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1 need to say to the witness, Mr. Rochon. Thank you for
2 the practice tip.

3 MR. ROCHON: Don't instruct the witness.

4 And you might as well be nice to me. We're going to
5 get through this.

6 THE WITNESS: He -- the term I stand by
7 what I said here, is absolutely correct. The clear
8 understanding of Intifada, again, the word that I
9 implicitly meant here was synonymous with the act of
10 killing, also synonymous with the act of killing
11 civilians is definitely the case.

12 Because you would have had to have 66
13 soldiers had been killed for Marwan Barghouti to be
14 talking only about, you know, targeting soldiers. The
15 fact that some of them were civilians means that he is
16 seeing the Intifada as also synonymous with the act of
17 killing civilians.

18 BY MR. ROCHON:

19 Q. How many people read that?

20 A. Read what?

21 Q. The Al-Hayat article on March 1st.

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1 A. Correct.

2 Q. And that according to UNESCO and other
3 bodies that the readership, excuse me, the circulation
4 was even lower than, by 50 percent than that in Uganda
5 at the time, right?

6 A. I don't know if it's there. If you say
7 it's there.

8 Q. You know he concluded in that report you
9 rely on, quote, they rely little on their own media as
10 a source of information, period, close quote. Right?
11 Do you remember that or would like to see it?

12 A. No, no. I relied on this report
13 specifically for that Al-Jadida is owned by the
14 Palestinian Authority.

15 Q. I know what you relied on it for.

16 A. No. You said I relied on it for something
17 else.

18 Q. That's fair. I apologize. Page 2 of the
19 article, and this is in Hebrew. I'll give you Exhibit
20 458.

21

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1 (Marcus Exhibit 458 marked for purposes of
 2 identification.)
 3 BY MR. ROCHON:
 4 Q. So this Exhibit 458, if you would, please,
 5 turn to the beginning -- the end of the 4th paragraph.
 6 And you see --
 7 A. Which page?
 8 Q. The end of the 4th paragraph of the whole
 9 thing. So it's on Page 2. You see Dr. Khatib said,
 10 quote, they relied little on their own media as a
 11 source of information period, close quote. Right? Do
 12 you see that?
 13 A. No, I don't see that in the 4th paragraph.
 14 Tell me again what you are looking for?
 15 Q. The second to last sentence. The last
 16 sentence of the paragraph. They relied little on their
 17 own media as a source of information.
 18 A. I'm sorry. The end of the 4th paragraph is
 19 the only newspaper amongst the old newspapers that
 20 survived the financial crisis was Al-Quds, because it
 21 wasn't dependent on funding from the PLO. I don't

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1 know.
 2 Q. Okay. Well, now you have the article. It
 3 may be that the translation from their websites doesn't
 4 match the pagination of the article. So I'll try to
 5 find that and give it to you after the lunch break. We
 6 took the translation from how they translated their own
 7 article.
 8 It's about 12:45, which is when I said I
 9 would break for lunch.
 10 (Whereupon, at 12:46 p.m. the deposition
 11 recessed for lunch)
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21

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1 AFTERNOON SESSION 2:19 p.m.
 2 BY MR. ROCHON:
 3 Q. We are back on. I would like to have this
 4 marked as Exhibit 459.
 5 (Marcus Exhibit 459 marked for purposes of
 6 identification.)
 7 BY MR. ROCHON:
 8 Q. Looking at Exhibit 459. This is a document
 9 that I started to reference earlier thinking I had
 10 given you the Hebrew version of it from the Palestinian
 11 Center for Policy and Survey research, which was the
 12 group Dr. Khatib spoke with.
 13 And you still have the last Exhibit 458 in
 14 front out, right, the Hebrew language document I was
 15 showing you just before we broke?
 16 A. 458, yes.
 17 Q. Okay. So the 458 document, the Hebrew
 18 language document, that is the document that reflects
 19 it was a seminar February 7th to 8th, 2003; is that
 20 right?
 21 A. Yes.

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1 Q. The other document, 459, is from the same
 2 program regarding the same presentation and includes,
 3 as you can see, written remarks from Dr. Khatib in
 4 English.
 5 If you would please look at Dr. Khatib's,
 6 the bottom of the first page of the English language
 7 version, 459, you'll see there the statistics regarding
 8 the circulation of the papers we discussed this
 9 morning; right?
 10 A. Yes.
 11 Q. On the second page at the end of that same
 12 paragraph is the sentence that says: But they rely
 13 little on their own media as a source of information.
 14 Do you see that there?
 15 A. Yes.
 16 Q. Dr. Khatib's view in that regard is
 17 consistent -- you have no reason to contradict Dr.
 18 Khatib on that, correct?
 19 A. Yes, I do.
 20 Q. Well, have you studied the readership in
 21 the Palestinian Authority?

38 (Pages 146 to 149)

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1 A. There's a poll that I included in my
2 Rebuttal Report, I think it was. I need to just find
3 it.
4 Q. Look at Page 20 of your Report. That may
5 be what you're looking for.
6 A. Yes, it is. And I'll just tell you what it
7 says here. A poll done July 2001, and I'll just read
8 it, quote, the Dean of Faculty of Media in Al-Aqsa
9 University Hussein Abu Shanag, three dots. In the
10 study, he revealed the extent to which the media were
11 followed during the Intifada's events (the PA terror
12 campaign 2000-2005). Television and satellite channels
13 were in the first place. Palestinian TV and
14 Palestinian satellite channels were in the first place
15 with 76.6 percent, Al-Jazeera in second place with 52.3
16 percent, while Abu-Dhabi, Egypt and the MBC satellite
17 channel were in the third place.
18 So what's clear here is that while the
19 period of violence was going on, the Palestinian
20 population did look to Palestinian TV as a source, as
21 the main source, 76 percent watching it.

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1 Q. That study doesn't say how many looked at
2 the TV or obtained news from TV. It tells you of those
3 who did, which percentage looked at what, correct?
4 A. That is correct.
5 Q. So that means if, as Dr. Khatib upon who
6 you rely is correct, that they relied little on their
7 own media as a source of information. This does not
8 contradict him, does it?
9 A. It does. It's saying they relied little on
10 their own media. Here it's saying PA TV was the main
11 source, 76 percent watching, 76 percent of Palestinians
12 watching it. 76.6 percent. This is number of
13 Palestinians. Because we're not reaching a sum total
14 of 100 here. Not the percentage of watchers. It's the
15 percentage of Palestinians. 52 are also watching
16 Al-Jazeera, 76 percent of Palestinians are watching
17 Palestinian TV.
18 Q. So let me show you Exhibit 460.
19 (Marcus Exhibit 460 marked for purposes of
20 identification.)
21 BY MR. ROCHON:

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1 Q. That is the exhibit you are referencing
2 from your Rebuttal Report?
3 A. That's correct.
4 Q. It's Exhibit, to be specific, S2 25, right?
5 A. I have it as 226 -- I'm sorry. You are
6 correct.
7 Q. And in that report does it indicate that
8 this reflected the amount of viewing or just as a
9 percentage of those who did view where they viewed?
10 A. I would have to check that out. I can't
11 give you that answer right now.
12 Q. That's because the exhibit is in Arabic?
13 A. Yes.
14 Q. So to the degree you relied in your report,
15 it is somebody who provided you some version of what it
16 says, right?
17 MR. YALOWITZ: Objection.
18 BY MR. ROCHON:
19 Q. You can answer the question.
20 A. What is it?
21 BY MR. ROCHON:

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1 Q. To the degree you rely on this exhibit,
2 someone must have given you a version of what it means
3 in either Hebrew or English, correct?
4 MR. YALOWITZ: Object to the form.
5 THE WITNESS: All the material that I rely
6 on is translated by expert translators. And I rely on
7 them.
8 BY MR. ROCHON:
9 Q. Some of the stuff you rely on is Hebrew,
10 some is in Arabic. I'm just saying, this one is in
11 Arabic?
12 A. Correct.
13 Q. You aren't able to read Hebrew; am I right
14 or wrong?
15 A. Correct.
16 Q. Okay. So in terms of what this does, we
17 have Dr. Khatib, upon whom you rely, saying they relied
18 little on their own media as a source of information in
19 connection with his discussion of the newspaper
20 readership, correct? If you will look at Exhibit 459.
21 A. Yes. What am I looking for here?

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1 Q. You're looking at the paragraph that starts
2 on Page 1, goes to Page 2. About Al-Qud's, the
3 readership and concludes that they rely little on their
4 own media as a source of information; correct?

5 A. Like I said, before I respond to this, I
6 mean it could be there are two conflicting different
7 research by different people. I would really like to
8 go through the Arabic on this, the whole thing.
9 Because the language, the way I read it here, unless
10 you tell me otherwise.

11 Q. When you say "read it here" the record
12 won't reflect.

13 A. The way it is worded in the section that I
14 included here.

15 Q. On Exhibit 445?

16 A. Exhibit 445 on Page 20. Palestinian TV and
17 satellite channels were in first place 76.6 percent,
18 Al-Jazeera in second place with 52 percent. Like I'm
19 saying, this cannot be of the Palestinians watching
20 because you would end up -- I would have to read the
21 full article to see if it's not as it seems to be.

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1 the third place, right?

2 A. Yes.

3 Q. Do you understand, even just looking at the
4 English language quote, leaving aside the Arabic
5 language document from which it was taken, you cite
6 this to say that 76 percent of Palestinians were
7 watching TV.

8 A. The source the Palestinian view 76 percent
9 watching.

10 Q. However, when you read this, you can't tell
11 from that whether he's saying of those who watched
12 anything, 76 percent watched those things, as opposed
13 to whether he was saying that 76 percent of
14 Palestinians were watching those things?

15 A. I can't tell from this. I have to check
16 the full article to get a sense.

17 Q. When you say "from this"?

18 A. From Page 20.

19 Q. Okay. In terms of the -- since you
20 directed us or we ended up talking about the audio
21 visual side of what PMW does, I would like to move to

Page 155

1 Q. And it says satellite televisions. Even
2 according to your translation, the translation that you
3 rely upon, it says that what they relied on was
4 Palestinian TV and Palestinian satellite channels,
5 right?

6 A. Correct.

7 Q. And we are about to get to the audio visual
8 media in a second. When they say Palestinian Satellite
9 Channels, you don't know what stations they are
10 referring to, do you?

11 A. Okay. It's something else that I don't
12 remember. I would look into it. It certainly lists
13 Palestinian TV first here. There must be a reason for
14 that.

15 Q. Palestinian TV and Palestinian satellite
16 channels?

17 A. Yes.

18 Q. And then Al-Jazeera?

19 A. Correct.

20 Q. And then other satellite channels from
21 Abu-Dhabi, Egypt and the MBC satellite channel were in

Page 157

1 your methodology there, please.

2 In connection with the PMW, and we have
3 talked about the newspaper process. Now to the audio
4 visual process, you have said that DVDs are collected
5 from programming and they are then reviewed at some
6 later point, correct?

7 A. Correct. At the time of the, what we are
8 talking about here, was done on videotapes, not DVDs.
9 And usually would be reviewed ideally later that day or
10 the next day.

11 Q. And so the way that the, then videotapes
12 were obtained was by someone recording programs?

13 A. Yes. We have a satellite dish on the roof
14 and we would record any number of different programs
15 simultaneously.

16 Q. But not all that were broadcasting every
17 single day by the TV stations?

18 A. Palestinian television we got almost all of
19 the whole day.

20 Q. Almost.

21 A. The first one in the morning who would

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1 could in, could be any time. At that period probably
 2 someone coming in at 7:00 would put the, 7:00 or 7:30,
 3 would put on the first tape. We use long tapes, four
 4 to six hours, and I can't remember exactly. I know we
 5 would sometimes run it on slow play for the six hours.

6 The last person who would leave in the
 7 evening, which could be 7:00 or 8:00, would put on a
 8 new tape as he was leaving. So we got most of the,
 9 essentially all of the day's taping until very late at
 10 night.

11 Q. And so this was a manual system that was
 12 operated on a daily basis. It wasn't some form of
 13 automatic recordation back then?

14 A. Back then, yes.

15 Q. And the stations that your folks recorded
 16 were, what you refer to in your report, as Palestinian
 17 Authority TV, Palestine live TV.

18 A. Today we are doing Palestine live TV.

19 Q. Back then you were not.

20 A. Back then we were not.

21 Q. And Al-Aqsa TV?

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1 A. Al-Aqsa TV from Hamas.

2 Q. What stations they were looking at back
 3 then?

4 A. That we were recording then to the extent
 5 that we were looking completely at Hamas was an issue
 6 of manpower. We were probably recording almost all of
 7 it then as well.

8 Q. When you say Hamas --

9 A. Al-Aqsa TV we probably didn't cover all of
 10 it, because of manpower shortage. Palestinian
 11 Authority TV we tried to cover all of it.

12 Q. You tried to cover Al-Aqsa TV and you
 13 believe you made your best effort to cover what you
 14 referred to as Palestinian Authority TV?

15 A. Correct.

16 Q. All right. You did not seek to record
 17 other stations that Palestinians watched -- Al-Jazeera
 18 or what have you, correct?

19 A. There were time periods when we would, when
 20 there was specific news issues that were relevant to
 21 those particular stations. For example, during the war

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1 with the Hezbollah in the north, we watched Hamas
 2 Al-Manar television, tape recorded that and reviewed
 3 that. There were periods where we -- the particular
 4 reason, I can't even recall it now, we watched
 5 Al-Jazeera, if we felt we needed to get more of an
 6 international view of what was going on for various
 7 reasons.

8 Q. All right. You would agree with me that in
 9 the next page of your report, Page 21, of that Rebuttal
 10 Report, the second paragraph it says: Al-Jazeera is
 11 not watched by PMW.

12 A. Correct.

13 Q. So doesn't say it's watched sometimes. It
 14 says it's not watched?

15 A. I said, if I didn't say exactly, I said on
 16 rare occasions there will be something specific we
 17 might put the taping on Al-Jazeera. I would not say
 18 that we watch it. That's why I wrote this. We did not
 19 watch it. Occasionally we would put it on.

20 Q. For purposes of what you report here and in
 21 the report that you submitted in this case, you do not

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1 cite to any Al-Jazeera clips in your report, do you?

2 A. Correct.

3 Q. All right. In your report you cite to PA
 4 TV 35 times, something that you call Palestinian TV.
 5 That's the same thing?

6 A. If I wrote Palestinian TV, should have been
 7 Palestinian Authority TV, I would assume, yes.

8 Q. And then one citation to Al-Alam TV. What
 9 is that?

10 A. Al-Alam TV was significant not because of
 11 the source, but because it was the, if I remember
 12 correctly, Deputy Minister of Prisoners describing the
 13 success of -- one of the reasons he was defending the
 14 signing of the Oslo Accords, and he was defending it
 15 specifically because it facilitated the Intifada and he
 16 talked about it facilitated the transfer of weapons, it
 17 facilitated -- if you read it, it's a very significant
 18 quote.

19 So when you have a Minister or a Deputy
 20 Minister explaining that the Oslo Accords are important
 21 because it facilitated the transfer of weapons and that

41 (Pages 158 to 161)

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1 led to, I think he used the word Glorious Intifada or a
2 positive term Intifada. That's a significant quote.
3 And since we can see him speaking, it doesn't, the
4 source doesn't really matter where it is. You see him
5 speaking and it's his words and very significant.

6 Q. So that's a reference, when you say the
7 Deputy Minister, that's the Abu Ein speaking July 4th
8 2006?

9 A. If you tell me the page.

10 Q. Page 60 of your first report.

11 A. Yes, that is right.

12 Q. And though Mr. Abu Ein eventually became
13 the PA Deputy Minister of Prisoners Affairs, you agree
14 with me he was not in that position July 4th, 2006, was
15 he?

16 A. It's possible. I don't remember.

17 Ordinarily I would have -- could be.

18 Q. And then just to conclude so you also cited
19 Al-Arabia one time in your report. Does that sound
20 about right?

21 A. Yes.

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1 certainly do not communicate with me after today,
2 unless for some reason your lawyer tells you to, and I
3 don't expect him to do so. Which is not to be rude to
4 you. It's just how the rules work, that we should not
5 communicate.

6 Now today you would agree with me that
7 Palestinians far and away watch Al-Jazeera more than PA
8 TV, correct?

9 A. Yes.

10 Q. And even as of 2010 that was the case, 2009
11 and 2010?

12 A. Yes.

13 Q. And if you didn't know that before, you
14 know it because you criticized one of the Defense
15 experts for citing data from that period as not being
16 relevant, correct?

17 A. Correct.

18 Q. And other than the quote that you directed
19 me to from the Dean of the Faculty of Media at Al-Aqsa
20 University, what else do you rely on for any conclusion
21 you would have as to what Palestinians were, in fact,

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1 Q. So overall we have 37 clips from PA TV that
2 you cite in your report, correct?

3 A. Correct.

4 Q. And --

5 MR. YALOWITZ: Just hold on one second.
6 Before you ask your question. Stop. You can't write
7 and listen. You have got to listen to the questions.
8 I know Mr. Rochon will appreciate it.

9 BY MR. ROCHON:

10 Q. I won't direct you what to do, but I don't
11 mind that instruction. If I'm asking you to do
12 something and bring back information, it will be clear.

13 A. In other words, you -- I see. Okay.

14 Q. We may not get to speak again and our
15 communications would only be through counsel. So I'm
16 not in a position where I should be asking you to do
17 things for me and provide things to me.

18 And if for some reason your lawyer wanted
19 to do something like that, he and I would discuss how
20 that would work. So, please don't take any of my
21 questions as a request that you get information. And

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1 watching in the period of the Second Intifada?

2 A. There are no things that I included in the
3 report, but I can, in terms of quantities, I can recall
4 certain references to people discussing Palestinian
5 television, people referring to Palestinian television
6 and being aware what was on Palestinian television.

7 The significance of Palestinian television
8 like Al-Hayat Al-Jadida was that this was controlled by
9 the PA. As you know, from the sources the Palestinian
10 media was completely controlled, even the
11 non-Palestinian Authority owned media.

12 So there were messages that were consistent
13 and Palestinian television Al-Hayat Al-Jadida that was
14 significant to us.

15 Q. Let me go back to my question and your
16 answer. In terms of what you can cite to as to what,
17 in fact, Palestinians were watching during that time
18 period, other than what you cite on Page 20 of your
19 Rebuttal Report, do you have any other data, polling or
20 statistics to show what Palestinians, in fact, were
21 watching?

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1 A. No. I have this one.

2 Q. And as we have agreed a little while ago,
3 it's not immediately clear to you whether he is citing
4 which stations people watched who chose to watch, as
5 opposed to the absolute number of percentage of
6 Palestinians who were watching, correct?

7 A. Correct.

8 Q. You don't know what percentage of
9 Palestinian homes had a TV in that period, do you?

10 A. I can't recall offhand. I remember from
11 the polls that we did have -- and again, I can't
12 remember it was surprisingly high number, but I can't
13 remember offhand how high it was.

14 Q. You mentioned a second ago that the
15 significance of the Palestinian TV from your standpoint
16 was that it was controlled by the Palestinian
17 Authority?

18 A. Yes.

19 Q. And from your standpoint, therefore, the
20 significance of the clips is not so much that someone
21 would have seen them, but that it was, from your

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1 these clips, many of them many, many times, I'm
2 assuming they were broadcasting them because people
3 were watching.

4 Q. Not all the clips were broadcast many, many
5 times?

6 A. Sure.

7 Q. As to any particular clip, you can't tell
8 me whether any particular person saw it --

9 A. No.

10 Q. Let me finish the question. As to any
11 particular clip you cannot tell me whether any
12 particular person saw it, can you, other than your
13 researchers?

14 A. Correct.

15 Q. The process on video clips was necessarily
16 different than the process on written media in terms of
17 how it was presented and reviewed and determined to be
18 translated or not, correct?

19 A. The process on video -- sorry.

20 Q. It was a bad question. If there's a
21 written article, it can be provided in relatively short

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1 vantage point, said by the PA.

2 A. Yes.

3 Q. Well, let me come back then to the
4 question. The first part of that is whether anyone was
5 seeing the clips that you cite. And as to that, other
6 than what we have already discussed about the statistic
7 from the Dean of Faculty reference on Page 20 and your
8 statement that you believe the TV ownership was
9 surprisingly high, can you provide me any other
10 statistics or information you rely on for actual
11 watchship?

12 A. Actual watchship?

13 Q. Yes.

14 A. No, no specific statistics.

15 Q. And of the 37 Palestinian TV clips that you
16 rely on in your report, as we discussed this morning,
17 you can't say whether any particular person saw those
18 or not, correct? Other than your researchers. Any
19 particular Palestinian person saw a particular clip or
20 not?

21 A. Palestinian Authority was broadcasting

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1 form for consideration of translating. Obviously, if
2 TV is being recorded for a period of 8 or 12 hours, you
3 are not going to sit down and have them walk you
4 through every program to determine what should be
5 translated, correct?

6 A. When we have our daily meeting, each of the
7 translators who was watching television will go through
8 a summary of the recordings that were significant, tell
9 what they are, either give a paraphrase or a direct
10 translation, if they have already done it. And based
11 on that we decide which ones are going to get further
12 precision transition.

13 In addition, they will also, as a rule, put
14 down what the gaps are, you know from time so-so to
15 time so-so was news report. Nothing of interest. Was
16 a song; was a soccer game, so we had a sense of the
17 day.

18 Q. Eventually the work product, as I click,
19 that shows the portion that you and your researchers
20 have decided is of interest, right?

21 A. Yes. A segment.

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1 Q. The clips you rely on, the 37 PA TV clips
2 that are relied on in your report, they are relatively
3 short, each clip, right, oftentimes just a minute or
4 so?

5 A. They are a minute or so, yes.

6 Q. The effort is to take and put into
7 relatively easy to consume form the portion that is
8 thought to be interesting or relevant, right?

9 A. And representative.

10 Q. And, as you say, materials of significance
11 are then released to the public; is that right?

12 A. That's correct.

13 Q. And the evaluation of whether something is
14 significant is yours, right?

15 A. Yes.

16 Q. You do not release all, for instance, all
17 the condemnations of attacks that were broadcast, do
18 you? I'm not talking about whether you have them in
19 your report. I'm talking whether you even release them
20 through PMW?

21 A. The specific condemnations that you say

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1 a unfairly favorable view of the PA in the media other
2 than PMW?

3 A. During the period that we are discussing I
4 don't think there was a favorable view of the
5 Palestinian Authority in the general media, but I'm not
6 an expert on the general media.

7 During the primer Intifada I -- like I say,
8 I'm not the expert on the world's general media. But
9 that wasn't the consideration. The consideration was
10 to get an objective picture out there.

11 Q. PMW and your website says that the Israel
12 and world media keep portraying reality as if the PA
13 has peaceful intentions; however, the PA school books
14 and media are full of incitement, hate and violence
15 glorification of the terrorists, denial of Israel's
16 right to exist, as well as demonization of Jews and
17 Israelis. That's what's on your website, right?

18 A. Yes. The websites is, what's written there
19 is a very accurate description of today. As I said,
20 during the primer Intifada I don't think the
21 Palestinian Authority, I can't remember specifically,

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1 that were reported, I don't think we released any of
2 the condemnations that may have been reported.

3 Q. Though there were some?

4 A. I know that there were, subsequently
5 learned there were reports that appeared in Wafha, but
6 the Palestinian Authority would release condemnations
7 usually very close to the act of the terrorism.

8 And our conclusion, and here it is an
9 issue, the conclusion is these were released because
10 there's international pressures on them, the world was
11 waiting to hear, Israel and the United States and
12 Europeans were waiting to hear condemnations, so they
13 issued condemnations.

14 Q. And the intent of PMW was, in fact, to
15 change the coverage of PA and the media generally. And
16 the understanding of what the PA was and the world at
17 large. Trying to change minds?

18 A. We were trying to present an authentic
19 picture of what was representative of what was
20 happening at all times.

21 Q. And did you consider that there was overall

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1 like I said, but I don't think their image at the time
2 was particularly good. Now there is a mistaken image
3 as our website says.

4 Q. At least, as of today your effort is in
5 part to change the views of, even the Israeli and world
6 media, right?

7 A. Can you read that to me. Show it to me.

8 Q. I can read it and show it to you. I would
9 ask to have this marked as 461, please.

10 (Marcus Exhibit 461 marked for purposes of
11 identification.)

12 BY MR. ROCHON:

13 Q. You should recognize. This is from your
14 website, right?

15 A. Yes, I'm reading it. Okay.

16 Q. What this document reflects is that your
17 view, PMW's view, is that the Israeli and world media
18 keep portraying reality in a way that you disagree
19 with, right?

20 A. That is --

21 MR. YALOWITZ: Object to the form.

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1 THE WITNESS: That's a little part of what
2 it says here. It says here that the key to future
3 peace is peace education. And that there is a lot of
4 hate education and hate incitement going on. And that
5 we are exposing it so that it can be eliminated and
6 bring peace. That is the full statement that's there.

7 BY MR. ROCHON:

8 Q. I'm quoting to you that you, PMW, have a
9 view that the Israeli and world media keep portraying
10 reality as if the PA has peaceful intentions.

11 So you do have a view as to how the world
12 sees them, right? Right?

13 A. The world media's view and the Israeli's
14 view of the Palestinian Authority is constantly in
15 change. If I were wording this today, I would word it
16 slightly differently.

17 But certainly I'm sure at the time we wrote
18 this, and our website is not updated every day,
19 certainly not the introduction like this, it's
20 something that certainly at various periods of time the
21 Palestinian Authority has been perceived as having

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1 activities being led by the Palestinian Authority
2 within Palestinian society, be they sporting events
3 named after terrorists, be they culture events when
4 they have children being taught singing about violence.
5 These are parts of PA society. And this picture of PA
6 society is not getting exposed. It's a significant
7 impediment to peace, as we write here.

8 And these parts of Palestinian society
9 controlled by the Palestinian Authority leadership that
10 are getting exposed, the longer they continue the
11 further we are going to be away from peace.

12 BY MR. ROCHON:

13 Q. That's all fine. I'm just reading to you
14 from your website what it says. I have read it fairly.
15 I haven't misquoted it, have I?

16 MR. YALOWITZ: Objection.

17 THE WITNESS: I don't understand what you
18 are trying to get to. I just don't understand.

19 MR. YALOWITZ: Objection. Objection.

20 Arguing with the witness.

21 BY MR. ROCHON:

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1 peaceful intentions. When we saw what was going on in
2 their messaging to their own people that it was the
3 opposite.

4 Q. You say in your website here, third
5 paragraph, that PMW wants to complete the picture of PA
6 society.

7 A. Bringing the world to understand the
8 obstacles to peace is the rest of that sentence.

9 Q. I'm using the first part of the sentence.
10 PMW wants to complete the picture of PA society.
11 That's what it says?

12 A. Yes.

13 Q. And so your effort through PMW is to change
14 the way the world and Israeli media present the picture
15 of PA society. That's what you say here, right?

16 MR. YALOWITZ: Object to the form.

17 THE WITNESS: You are generalizing way
18 beyond I think the specific intention here of the
19 sentence and in the context of the entire paragraph
20 that is here.

21 What is being said here is that there are

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1 Q. I'm asking you whether I have misquoted the
2 website?

3 A. The words are there.

4 Q. When you say that you want to complete the
5 picture of PA society, what you mean is that you would
6 like to change the way the world views that society,
7 right?

8 A. That's not what it says there. What it
9 says is, we want to expose impediments to peace.

10 Q. You said that it's important to know that I
11 wasn't paying attention to the context of where those
12 statements appeared?

13 A. Correct.

14 Q. We have several times explored the fact
15 that I have possibly taken statements out of context in
16 my questions to you, right? Whether it be John Kerry
17 or your brother or your own website, right? We have
18 done that today, right?

19 MR. YALOWITZ: Objection. Misstates the
20 testimony.

21 THE WITNESS: I don't know, you know, if I

45 (Pages 174 to 177)

Page 178

1 have used a term out of context, it was inclusions that
2 weren't there at all in the text.

3 BY MR. ROCHON:

4 Q. Do you agree with me that overall the
5 amount of material, audio/visual material cited in your
6 report, is an infinitesimal amount of the total
7 broadcasting from the period in question?

8 A. In terms of quantity, yes, it was
9 represented.

10 Q. You have said in your report at Page 52,
11 please, your main report, if you would look at Page 52,
12 you say there that PA official condemnations of attacks
13 were not authentic expressions of the PA policy at the
14 time, correct?

15 A. Correct.

16 Q. So this is a place where you take the
17 actual words that are said and you reach a conclusion
18 as to whether they are authentic expressions or not?

19 A. Correct.

20 Q. And that would be interpretation by you,
21 right?

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1 have a condemnation which sounds like this, and I can
2 read it to you, but as opposed to the clear explicit
3 glorification of terror that was going on all the time,
4 it makes you wonder.

5 And when you see that the glorification of
6 terror is explicit, the naming of sporting events after
7 terrorists is explicit, the naming of streets or
8 whatever it be, after them is explicit.

9 And then you have this 8-line sentence
10 here, which is supposed to be a condemnation talking
11 about Oslo, and White House, and you name it what he's
12 talking about, well, it's very, very logical and
13 educated conclusion that all of the glorification of
14 terror and supporting of terror is the authentic PA
15 policy.

16 And this statement here is not to be
17 taken -- they couldn't both be authentic Palestinian
18 Authority policy. You can't name a soccer tournament
19 after Al-Abbasi, killed 31, Ministry of Education did,
20 and at the same period of time be condemning a suicide
21 bombing.

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1 A. I'm looking at this specific case, if it's
2 an interpretation or if it's actually what is being
3 said. Yes, I guess you could say that is a very well
4 based interpretation.

5 Q. Your section here of your report begins on
6 Page 51 and you have given it the bold title
7 Understanding PA "Condemnations" of Terror?

8 A. Yes.

9 Q. At the beginning of that section, at the
10 top of 52 you say, again, quote, there are many reasons
11 not to treat the PA official condemnations as authentic
12 expression of the PA policy at the time, close quote,
13 right?

14 A. Yes.

15 Q. And you cite for that conclusion that they
16 could not be relied upon, the statement by the
17 President. Right there on that Page 52. Right? By
18 President Arafat.

19 A. That was one of the examples that I
20 brought. The actual, the proof is based on a number of
21 things that I said on this page here. First, when you

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1 So the overwhelming evidence indicates that
2 this is authentic expression. And the language of the
3 expression also adds to that.

4 Q. So what you do here is that you take, I
5 guess, two facts you claim to be true; one of them is
6 what Mr. Arafat said, and the other is what Arafat said
7 and the other is these things you cite, such as naming
8 of streets or stadiums or other things that you refer
9 to as glorification. And you compare them and you
10 reach a conclusion that the condemnation, therefore, is
11 not authentic.

12 A. I said that was one of the reasons. The
13 language of the condemnation is not the language that
14 is the one that is actually generally used by the
15 Palestinian Authority when they are interested in
16 condemning something.

17 When the PA wants to condemn an Israeli
18 action in which Palestinians would be killed, it is
19 clear, explicit, repetitive, there is no doubt that
20 it's being condemned. And it's not sort of the last
21 four words of 40, 50, or 60 word sentence or the last

46 (Pages 178 to 181)

Page 182

1 few words the way it appears here.

2 So it's both the environment of celebrating
3 terror, as well as the language in this particular
4 case, as well as the poll that we cited here.

5 Q. Whatever you rely on, at the end of the day
6 you reach a decision that you then announce in your
7 report as to, in essence, what the PA actually meant
8 when it provided this condemnation. Your view of your
9 work is you are almost able to get inside the head of
10 PA and describe what it, in fact, meant, correct?

11 MR. YALOWITZ: Object to the form.

12 BY MR. ROCHON:

13 Q. That was correct, right?

14 A. It's not a matter of what they meant. It's
15 a matter of what they intended.

16 Q. Okay. Now when you talk about
17 glorification, your report cites many media citations
18 that you rely on for this supposed glorification of
19 terror, right?

20 A. Yes.

21 Q. Almost all of them are from the time period

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1 2009 to 2012; isn't that right?

2 A. I will check.

3 Q. That section of your report begins on Page
4 31 called Glorification of Terror. When I say report,
5 I mean your first report. At the bottom of Page 31.
6 The section of your report called Glorification of
7 Terror and Terrorism.

8 A. Yes.

9 Q. That's where you marshal the clips and
10 reports in support of that. And you would agree with
11 me that the vast majority of them are from the period
12 of 2009-2012?

13 A. The first one is 2002. The next one is
14 2003. The next one is 2004. The next one is 2012 --
15 2003, 2002, 2003, 2003, 2001. 2001, 2001, 2001, 2001,
16 2012. 2002, 2002.

17 Certainly does not seem -- 2002, 2002,
18 2003, 2002, 2005, 2002, 2002, 2002. 2009 to 2011.

19 Q. So you would say it's a mix?

20 A. Yes. There are many, many different
21 examples here.

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1 Q. One of the ones you cited was the soccer
2 tournament, right?

3 A. Yes.

4 Q. On Page 32. That was in April of 2012,
5 right?

6 A. Say again.

7 Q. The soccer tournament at the bottom of Page
8 32. Raed Nazzal.

9 A. No. The soccer tournament -- the one I
10 mentioned a few minutes ago is the one from 2002.

11 Al-Baset Udeh championship soccer tournament named
12 after the suicide bomber who killed 31. And that was
13 in 2003. The suicide bombing was in 2002 and the
14 January of 2003 they have the soccer tournament named
15 after him.

16 Q. Are you done?

17 A. Yes.

18 Q. And going to, on Page 52 what President
19 Abbas actually had to say, which is the other half of
20 what you rely on, you said the glorification is one
21 thing and then whether or not the statement itself is

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1 this -- as sufficient as vigorous condemnation?

2 A. And there's more in addition to just the
3 glorification. There's also the promotion, which we
4 haven't talked about. But when official Palestinian
5 television has, and the newspaper will have religious
6 leaders appear on television calling for demonizing
7 Jews as the enemy, calling for the killing of Jews any
8 number of times. These are people who then continue to
9 appear on television.

10 So you have not just the glorification.

11 You have actually the calls for the killing before.

12 You have got the glorification after. And you also
13 have no acceptance of responsibility.

14 Those three categories really, people like
15 Mahmoud Abbas, and that is, of course, in the report,
16 it talks about having sent, all the people who are in
17 prison, we sent them.

18 So that, when you have all those three
19 categories pointing to the fact, and agreeing with
20 promoting terror, glorifying terror and accepting
21 responsibility for terror. Then in the middle you have

47 (Pages 182 to 185)

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1 very cumbersome condemnations of terror, it doesn't
2 seem to have any reliability as an authentic expression
3 of what they really wanted to tell the people.

4 Q. So you conclude then, when President Arafat
5 was making the statements condemning an April 12, 2012
6 suicide bomber, you are able to interpret his sincerity
7 in that condemnation?

8 A. I don't use the word interpret. I'm
9 explaining why he said it. He said it because there
10 was international pressure. I'm not interpreting. I'm
11 saying they can't all be authentic statements.

12 And since the overwhelming majority of
13 evidence goes the other way, you weren't getting daily
14 condemnations. The overwhelming majority of evidence
15 points the other direction. The language and the
16 context doesn't allow us to accept this.

17 Q. If you go to the first page, I've used the
18 word "interpret" several times. Go to the first page
19 of your report. I'm going to come back to the page
20 with the condemnation. Just go to the first page of
21 your report. Page 1. Fourth paragraph.

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1 that -- together with everything else.

2 Q. So the first sentence that the Arafat
3 statement, the announcement said, expressed the
4 condemnation of all terror attacks against civilians
5 whether Israeli or Palestinian, and whether the terror
6 is state terror or by groups and individuals, right?

7 A. Correct.

8 Q. So we have the word "terror" in the first
9 sentence?

10 A. Well, that's the newspaper's wording.

11 Q. That's what you have?

12 A. Yes.

13 Q. Okay. It's what you cited in your Report?

14 A. Right.

15 MR. YALOWITZ: Let him finish his question.
16 The Court Reporter can only take one person at a time.
17 BY MR. ROCHON:

18 Q. So you complained that he didn't use the
19 word "terror", but, in fact, the first sentence of this
20 announcement had the word "terror" in it at least three
21 times and you put in bracket an extra one, right? It's

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1 We use these materials to analyze,
2 interpret and report on political and social trends
3 violence, glorification of terror and more, as
4 indicators of Palestinian policy and tactics towards
5 achieving political goals.

6 That's a quote from your Report, right?

7 A. Yes, it is.

8 Q. So you certainly say you used these
9 materials to interpret these things, right?

10 A. The statement that we use these materials
11 to interpret and report on political trends,
12 interpreting and reporting on political trends. Didn't
13 say here that we are, you know, bounds of
14 glorification. We are interpreting them.

15 I'm not sure that relates specifically to
16 this specific sentence. But it's a linguistic issue
17 here. It's clear what I'm saying here. I'm saying
18 that this -- it says we severely condemn the acts of
19 violence against Israelis, specifically the last action
20 in Jerusalem not even mentioning, calling it terrorism,
21 calls it an action. All of that is an indicator

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1 either three or four uses of the word "terror" in the
2 very first portion, right?

3 A. Yes.

4 Q. And then the next part says: That
5 President Yasser Arafat and the Palestinian leadership
6 expressed their condemnation of all terror attacks
7 against civilians.

8 A. Yes.

9 Q. And whether it's state terror or by groups?

10 A. It is in there. I didn't notice it.

11 Q. Okay. So having then come -- next sentence
12 says: This comes from a resolved principle that
13 opposes turning to violence and terror against
14 civilians, as a means of achieving political goals?

15 A. Correct.

16 Q. There's nothing back stepping here, there's
17 nothing in here that omits the word "terror", is there?

18 MR. YALOWITZ: Objection. Compound
19 question.

20 BY MR. ROCHON:

21 Q. Okay. Let me rephrase my question. There

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1 is no walking away from the word "terror" in those
2 first two paragraphs?

3 A. Correct. I was commenting on the reference
4 to the specific attack, terrorist attack that had been
5 under discussion. He referred to it as an action in
6 Jerusalem.

7 Q. But it's clear he's referring to it as an
8 act of terror? In the context of this document there
9 is no question that they are expressing their
10 opposition to terror and they are including this last
11 action as part of that condemnation, right.

12 MR. YALOWITZ: Objection. Compound
13 question.

14 BY MR. ROCHON:

15 Q. You can answer. Would you like me to
16 repeat?

17 A. Yes, please.

18 Q. When he refers to the last action in
19 Jerusalem, it's clear that this is what this entire
20 announcement is about, right? This is the day after
21 the attack that it discusses.

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1 about Abraham Hamed who is serving about the 56 life
2 sentences, Abdullah Bargouti who is serving 67 life
3 sentences and Abbas Syeed is serving 35 life sentences.
4 Each one of them was involved in planning suicide.
5 Abdullah Bargouti also was building the bombs.

6 So we sent a release on this that they were
7 honored three times, three different programs honored
8 each one of them and within the same period of a few
9 weeks.

10 So Palestinian Authority television
11 responded to us. And when they introduced the next
12 program after our report, they said we were surprised
13 or upset, I can't remember the exact wording, when the
14 Israeli organization, I think she mentioned, she said,
15 Palestinian Media Watch reported on Abbrahim Hamed,
16 Abdulah Bargouti, calling them terrorists. They are
17 not terrorists, they are heros, Abdulah Bargouti is a
18 hero, Hamas is hero.

19 There has been a resistance since the time
20 of the Intifada until today to call these people
21 terrorists. And that's why I say even though there was

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1 A. It's possible.

2 Q. Possible? This condemnation that is being
3 issued the day after the suicide bombing, right?

4 A. Correct.

5 Q. It uses the word "terror" multiple times?

6 A. As a general concept.

7 Q. Yes. And it includes that action in that
8 position, right?

9 A. Let me just tell you why I think -- I don't
10 know, here, I'm not getting into his mind. I don't
11 know why he didn't use the word "terror", he didn't
12 refer to specific terror.

13 We recently released, May of this year,
14 three times in May of this year, a program on
15 Palestinian television that goes to the homes of
16 terrorists who are in jail and it interviews the family
17 members and it very often uses the word heroic,
18 terrorists who might have been involved in the deaths
19 of many, many people.

20 Three times in May they went to the homes
21 of three of the most infamous terrorists. I'm talking

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1 this general statement about terror in the beginning,
2 when he actually spoke about the specific incident, he
3 didn't use -- I don't know what was in his head. I
4 know that up until today the Palestinian Authority
5 adamantly refuses to programming like this, to say that
6 people, even if they blew up, you know, dozens and
7 dozens of civilians, they say they are terrorists, they
8 are heros.

9 So that's why I'm questioning, you know,
10 whether this was just an oversight that they didn't use
11 the word or he really is just calling it amaliyah,
12 which is their word for action.

13 Q. There's no question that he is condemning
14 acts of terror against civilians in that first part?

15 A. In the first part.

16 Q. Could that be referring to anything other
17 than, since this was issued the day after, and because
18 it condemns acts of terror against civilians, whether
19 Israeli or Palestinian. And he says whether the terror
20 is state terror or by groups and individuals.

21 You know what that means, because it's

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1 plain language. You don't have to interpret it. Don't
2 you?

3 A. Yes. He says here, as a general statement,
4 they are against terror. And I'll explain something --

5 Q. When it says "state terror", he's referring
6 to Israel?

7 A. Yes.

8 Q. When he says groups and individuals, he's
9 referring to Palestinians, right?

10 A. That would be the implication.

11 Q. So he's condemning those things. The fact
12 that later those individuals aren't condemned in the
13 way you like in 2012 or '13, cannot inform what
14 happened in 2002, right?

15 A. Like I said, the examples that are in here
16 are not just from 2012, '13. You have got Whafa Idris
17 suicide bomber, and she condemned all those examples
18 that showed you of being honored and glorified for
19 2001, 2002, 2003.

20 So your statement from the beginning, that
21 majority from now, they were brought because they were

Page 196

1 would agree with me, that visit, those visits to
2 prisoners' families in 2013, cannot inform what he was
3 thinking in 2002, can it?

4 A. What we are seeing in 2013 didn't start in
5 2013. It's been a continuous progression. I just
6 brought that as an example to show the use of the word
7 is something that is not, is totally not accepted in
8 Palestinian society. And that has been the case
9 throughout this entire period.

10 There's an Abbas quote I could have brought
11 from 2005, which is in this report, where he is talking
12 about all of the prisoners and he says, he calls them
13 fighters. He doesn't call them terrorists, even though
14 they are in prison. It's been a consistent message.

15 MR. YALOWITZ: We have been going about an
16 hour. Should we take about a short break?

17 MR. ROCHON: We can do that. I'll take a
18 break. But we are going -- we started late after
19 lunch. We'll take a break.

20 MR. YALOWITZ: We have been going about an
21 hour. I just thought it would be good to take a break.

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1 specifically glorifying and honoring. The ones that I
2 brought that were later primarily the examples of
3 glorifying of terrorists involved in terror against
4 some of the Plaintiffs or the families of Plaintiffs in
5 this case. That's why those particularly late examples
6 were brought.

7 The other examples, again, I would have to
8 go through it, but that was my general -- intention was
9 to show example, I think we brought Whafa Idris as an
10 example of one. We didn't bring all the terrible
11 glorification of that period.

12 Q. You mentioned that your understanding of
13 this statement by President Arafat in the context of
14 what was done in the last year regarding visiting
15 prisoners. You would agree that it's very difficult to
16 interpret what he meant in 2002 based on what happened
17 nine years after he died this year?

18 A. And everything that was happening at that
19 period of time.

20 Q. Your last answer where you responded with
21 this narrative about seeing prisoners in 2013, you

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1 MR. ROCHON: Fine time to take a break. We
2 can go off the record.

3 (Brief Recess) 3:20 p.m.

4 BY MR. ROCHON: 3:45 p.m.

5 Q. Go back on the record. I want to come back
6 to the question of where Palestinians were getting
7 their information from during the Second Intifada.

8 In your Rebuttal Report you claim that PA
9 TV was the main TV source that Palestinians used in
10 that time period, correct?

11 A. Which page is that on?

12 Q. Page 20. The authority for that is a poll
13 found in Al-Ayyam from September 24th, 2000, right?

14 MR. YALOWITZ: I'm sorry. I think there
15 was an -- it's a compound. You have asked him two
16 questions.

17 THE WITNESS: No. That was the other
18 source.

19 MR. YALOWITZ: Which question do you want
20 him to answer?

21 MR. ROCHON: I think I have only asked one,

50 (Pages 194 to 197)

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1 but I'll start over.

2 Go to Page 20 of your Rebuttal Report. You
3 said on the middle of the page, PA TV was the main TV
4 source the Palestinians used, right?

5 A. 76 percent watching.

6 BY MR. ROCHON:

7 Q. Your source for that claim was S225, which
8 is also Exhibit 460 in front of you in Arabic?

9 A. Right.

10 Q. Now, and as we have already described, you
11 obviously had to rely on a translation for that, right,
12 for what you know about what's in that document?

13 A. Correct.

14 Q. Now, in fact, that survey, which I probably
15 have right here, did not review viewership but the
16 extent of the media coverage of the Intifada
17 activities; isn't that right?

18 A. Not that I understand. Like I said, I'll
19 have to go and look at the whole article to see if
20 there has been mistaken interpretation. I don't see it
21 but I'll have to check the article.

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1 Q. And when you do what I'm suggesting, I
2 guess, the 76.6 percent number related to the coverage
3 of the issue; that is which stations, channels were
4 covering the Second Intifada, not what the viewership
5 was; isn't that right?

6 A. Like I said, I have to go back and look at
7 the whole article.

8 Q. Okay. In addition, I would like to turn --
9 ask to have this marked as 462. If you could turn --
10 this is an article, a long article called Journalism
11 Education in Countries with Limited Media-Free Freedom,
12 edited by a Mr. Beate Josephi.

13 (Marcus Exhibit 462 marked for purposes of
14 identification.)

15 If you could please turn to Page 78 of that
16 article. In the bottom under Television, you'll see
17 that it starts off describing Palestinians as the
18 heaviest TV watchers in the region.

19 A. Okay.

20 Q. And let me be clear to you, this article is
21 from a 2010 publication, but the second sentence says,

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1 it refers to statistics from 2004. Do you see that?

2 A. Okay.

3 Q. The article says: Among the Palestinians
4 with those TV sets, 29.3 percent watch the official PA
5 television station daily, with a far higher percentage
6 in Gaza than in the West Bank. And that 47 percent
7 have satellite dishes and that the overwhelming
8 majority of those individuals prefer Qatari television
9 station Al-Jazeera. Do you see that?

10 A. I see that.

11 Q. And, in fact, it's the case, isn't it, that
12 there are nearly 30 different private TV stations that
13 also broadcast from the major Palestinian cities?

14 A. Yes. Where does it say that?

15 Q. Next page.

16 A. Yes.

17 Q. So I realize you haven't seen this before,
18 correct?

19 A. Correct.

20 Q. All right. You obviously did not consider
21 it in connection with your report, did you?

Page 201

1 A. I didn't consider it, but I don't see that
2 the statistic from 2004, which is -- don't know which
3 month of 2004, but if it's the end of 2004, it's toward
4 the end of slowing down of the Intifada.

5 The specific article we read was, talked
6 about during the Intifada period. Could be a change in
7 these two years. The fact also is 30 percent of
8 population watching Palestinian television would still
9 mean a million or so, you know, Palestinians.

10 So it doesn't -- it also doesn't change
11 anything about what I talked about earlier, about the
12 Palestinian television being significant because that
13 is what is controlled.

14 Q. Well, we'll get to controlled in a second.
15 But first, I want to get to who is watching before we
16 get to the question we have heard several times about
17 the control.

18 In terms of what you have provided us
19 regarding who is watching, it is the citation to
20 Exhibit 460, Page 20, of your Rebuttal Report, right?

21 A. Exhibit, yes.

51 (Pages 198 to 201)

Page 202

1 Q. That's a document you can't read because
2 it's in Arabic. You can't tell me for sure today what
3 it means because it's not in a language you read,
4 right?

5 MR. YALOWITZ: Objection, form.

6 BY MR. ROCHON:

7 Q. I'll rephrase it. The document upon which
8 you rely is a document you can't read, correct?

9 A. That is correct. My translators have read
10 it.

11 Q. Let me, if I could, before I get to that
12 one, you have in front of you the English language
13 Exhibit for Dr. Khatib that I gave you earlier.

14 Do you have it? Thank you for digging that
15 out. It is Exhibit 459. Turn to Page 5. Bottom of
16 Page 5 the paragraph that is on that page talks about
17 newspapers and says: Only 13 percent of Palestinians
18 would rely on Palestinian newspapers as an information
19 source. Correct? Where 65 percent said they would
20 rely on TV.

21 A. May I read this?

Page 203

1 Q. Okay.

2 (Pause)

3 A. It's talking about prior to the violence.

4 Q. It's talking about August of 2000, a couple
5 months prior to the beginning, what most people termed
6 the beginning of the Second Intifada, correct?

7 A. Correct.

8 Q. All right. So as of that timeframe,
9 according to that paragraph there discussing print
10 journalism, only 13 percent of Palestinians would rely
11 on Palestinian newspapers, correct?

12 A. Yes. Before the Intifada.

13 Q. And you have no data or information that
14 says that that reliance jumped after the beginning of
15 the Intifada, do you?

16 A. No.

17 Q. All right. 65 percent said they rely on
18 TV, correct?

19 A. Yes.

20 Q. However, and then it goes from Page 5 to 6,
21 over 55 percent of the Palestinians said they would

Page 204

1 rely on non-Palestinian broadcast media, correct?

2 A. Yes.

3 Q. A majority relied on non-Palestinian media.

4 I'm going to turn now to 209. I would like
5 to have this marked as number 463, please.

6 (Marcus Exhibit 463 marked for purposes of
7 identification.)

8 BY MR. ROCHON:

9 Q. And this one you may well recognize because
10 it covers PMW. Unfortunately, I have, once again,
11 given you the wrong one. This is 463. I'm going to
12 give you a replacement 463.

13 This is an article that discusses PMW in
14 part. It's from 2005, The Jerusalem Report.

15 And I'm going to, once you familiarize
16 yourself to it, I'm going to take you to Page 2.

17 A. All right. I read page --

18 Q. If you think you need to read it, after I
19 ask my question based on it, feel free to do so. Top
20 of Page 2. Do you remember being interviewed by this
21 woman, Isabel Kershner or not?

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1 A. I've been interviewed a number of times by
2 her.

3 Q. At the top of Page 2 she writes, near the
4 top, even if nobody is watching, he adds, alluding to
5 Pat TV's legendary low rightings, it is important,
6 because it is a strictly controlled channel, it
7 provides a window into the Palestinian leadership's
8 thinking. You see that?

9 A. Yes.

10 Q. Do you stand by that?

11 A. Yes, I do.

12 Q. I don't want to be tricky here with you,
13 when I said, do you stand by it, the part -- covers a
14 lot of what is in that sentence, but it also has you
15 alluding to PA TV's legendary low ratings, you would
16 agree with me, that PA TV has legendary low ratings?

17 A. Yes.

18 Q. Your view that you have alluded to several
19 times is that the PA media is controlled. PA TV is
20 controlled?

21 A. Correct.

52 (Pages 202 to 205)

Page 206

1 Q. There's an official entity that pronounces
2 the PA's views on matters called WAFA, right?

3 A. It's a official news agency.

4 Q. So that is how, when the PA makes an
5 official pronouncement, it does it through WAFA,
6 correct?

7 A. It's a news agency. It's not just official
8 announcements. But official announcements also appear
9 in WAFA. Also news stories in WAFA.

10 Q. WAFA is not one of the outlets that you
11 monitor, is it?

12 A. Correct.

13 Q. Even though it is a more official PA
14 vehicle for getting news and information out than PA
15 TV, isn't that right?

16 A. We were watching what Palestinian Authority
17 was say to its people. Palestinian population wasn't
18 getting WAFA, wasn't seeing WAFA. In fact, in all of
19 the polls of Palestinians' use of media throughout the
20 Intifada period, WAFA wasn't even mentioned, even zero
21 percent, it wasn't even there.

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1 WAFA wasn't the source that was going to
2 the people. WAFA was a way that the Palestinian
3 Authority could make statements that they wanted to be
4 official statements. That wasn't going to the people.
5 Nobody saw it.

6 Q. If your goal was to see what Palestinians
7 were actually watching, why didn't you monitor
8 Al-Jazeera, which is more widely watched?

9 A. Our goal was to find out what the
10 Palestinian Authority was saying to its people by the
11 structures it controlled, Al-Hayat Al-Jadida, and it
12 was even more than this. And this is critical.

13 The media for us wasn't just what they were
14 saying. It's what they were doing. When Al-Hayat
15 Al-Jadida reports on the sporting events named after
16 terrorists, so that reports on cultural events, it's
17 telling us activities. It doesn't matter how many
18 people read about the activity.

19 The fact is, that they had the Abdul Razzaq
20 Championship Cup in 2003, January 2003. And it was
21 glorifying the suicide bomber who had killed -- that's

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1 an is activity. Doesn't matter how many people are
2 reading about it.

3 Fact is, they chose, Ministry of Education
4 chose to turn a murderer of 31 into a hero. That, for
5 us, is critically significant and it doesn't matter
6 that only 5,000 people were reading it.

7 Q. When they were publishing about the soccer
8 tournament, there was a soccer game being played,
9 right?

10 A. Correct.

11 Q. All right. So the coverage of the soccer
12 game is not itself glorification. You would agree with
13 me, if the soccer game is being played, the media can
14 report on it, right?

15 A. It depends how it's reported. If it's
16 reported, for example, again, this would be on a
17 case-by-case basis, if the action is glorified, if
18 these terrorists, if he was a suicide terrorist is
19 referred to in the article as a Shahid, as a martyr,
20 which is the term of honor that cannot be placed on
21 someone who did a negative action.

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1 So if the article itself might also be
2 problematic, it's in addition to the again independent
3 each individual article.

4 Q. You just said that the name Shahid cannot
5 placed on one unless they did an honorable action. We
6 have already discussed, you are not an Islamist, you
7 don't speak Arabic, and you're not a religious scholar,
8 right?

9 A. Correct.

10 Q. So in terms of what is or is not meant by
11 the term Shahid, you don't have any expertise to tell
12 us what that means?

13 A. I have read on the terms that are important
14 for my work. You asked me before if I had any formal
15 academic education. I have made a point of studying
16 these terms, using many, many different sources with
17 people in my office who are educated and scholars in
18 this field, be they sources from the Quran, be they
19 sources from the life of Muhammad, these things I have
20 studied.

21 I have studied how Palestinian Authority

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1 school books define terms like Shahid. And I have
2 studied how the religious leaders define the term
3 Shahid.
4 So, when I make a statement about the
5 terms, I would not make a statement about a term I did
6 not know. The term Shahid I have studied and don't
7 need an academic, formal academic education to study up
8 on a concept that I have intensely studied.

9 Q. When you say "intensely studied", you have
10 never read a word yourself in the original text of any
11 of the documents you just referenced, the Quran, any
12 sermons, any religious pronouncements. Anything you
13 know is based on what other people have told you,
14 right?

15 A. I have read translations.

16 Q. Okay. What translation of what have you
17 read that Shahid always is used as a reference, and can
18 only be given to someone who has done something
19 honorable?

20 A. Let's word it this way. It's impossible --
21 there are a number of different things that a person

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1 books and through other things that I have done in my
2 own study about Shahid and Shahada.

3 Q. So you have come to this conclusion that
4 that's what that means?

5 A. I'm not coming to the conclusion. I am
6 repeating what I have read. If you like, again,
7 there's numerous sources, I think many of them in my
8 report, about the importance of Shahada, what it means,
9 and it's a positive thing.

10 Q. We'll come back to religion. I didn't mean
11 to interrupt you.

12 A. I'm okay.

13 Q. I'm going to come back to that in a minute.
14 First, I want to talk about your notion that the media
15 is controlled and you claim it's controlled partly
16 through intimidation; is that right?

17 A. The report that I gave as an attachment by
18 Bassan Bid gave example after example of intimidation.
19 And he concludes even the name of his report he called
20 Between the Hammer and the Anvil, between the hammer of
21 Palestinian Authority, I can't remember now, coercion

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1 can be Shahid for. It's impossible to be a Shahid if
2 you did a negative action in order to be a Shahid.
3 Impossible.

4 Q. What have you read or has been read to you
5 upon which you rely?

6 A. Defining a Shahid?

7 Q. Yes.

8 A. I have read probably, you know, studies of
9 Islamic education in Palestinian school books, as well
10 as earlier dates in Jordanian school books, Egyptian
11 school books. All of these definitions were translated
12 for me by my staff.

13 I don't have all of those full translations
14 in front of me. Many of them appear in our report.
15 There's a consistent message. I can give you an
16 example I remember for Jordanian and Palestinian school
17 books it was actually a language lesson, who are the
18 most honorable next to the Prophet and the answer was a
19 messenger's friends, comrades, and who is after them,
20 the Shahids.

21 I have read through the Islamic education

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1 and the anvil of self-censorship. That's how he placed
2 media.

3 And he brought a number of examples of
4 people who were tortured, people arrested, people had
5 to sign documents that they wouldn't go and write or
6 say anything, publish anything against the Palestinian
7 Authority line. The intimidation was very, very great.
8 And Bassan -- human rights activist.

9 Q. So turn, if you would, to Page 16 of
10 Exhibit 444, which is your first report. Do you have
11 it? Turn to Page 16. You cite his report that you
12 were just referencing?

13 A. Yes.

14 Q. Report of the Palestinian Human Rights
15 Monitor, November 1999, correct?

16 A. Yes.

17 Q. So this is a report from the Palestinian
18 Human Rights Monitor?

19 A. Correct.

20 Q. And it was published in November of 1999?

21 A. Correct.

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1 Q. And so the PA allowed the publication of
2 the report about the alleged censorship. That's what
3 you are relying on, this report, right?

4 A. The truth is, I don't know if the PA, when
5 you say "allowed the report", we never saw a copy of
6 this in Arabic. I don't know if it appeared in Arabic.
7 This is something that I have a copy of the original
8 report, published report in English. So it's not
9 something that's translated. This was the actual
10 report in English.

11 Q. Okay. So you had a report in English and
12 you are relying on what you read in that report?

13 A. Bassan Bid. Yes.

14 Q. And there are in your report, which you
15 rely on his report, eight examples of journalistic
16 abuse that you cite, correct?

17 A. His report had many more. There's more
18 than eight.

19 Q. I'm sorry. Between '95 and '96.

20 A. About 21 or more examples that I have cited
21 here, that he cited over the period of years.

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1 of the Intifada, right?

2 A. Yes.

3 Q. And you have suggested even that the
4 polling I showed you just a minute ago that came from a
5 month or two before the Second Intifada might not be
6 accurate because things could have changed in a couple
7 of months, right?

8 A. Certainly.

9 Q. And you agree with me that you cite nothing
10 regarding the intimidation and control that occurred
11 during the Intifada, do you?

12 A. This report, as far as I know, he didn't
13 publish another report on this topic during that
14 period. Later on he did.

15 Q. Okay. And you don't cite anything else
16 beyond that period, leaving aside whether he did, you
17 don't have another source that cites something later,
18 do you?

19 A. No. If you want to know there's a
20 difference between I think media and control -- why one
21 is applicable right before and after. But you haven't

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1 Q. Maybe I meant to say 18 or something.
2 That's okay. The dates of these are from '95 to August
3 of '98, correct?

4 A. No, there are some of them from '99 as
5 well. On Page 18 you see three examples from '99.

6 Q. Okay. These do not reference, obviously,
7 any activities in 2000 during the Second Intifada, 2001
8 to 2002, that period?

9 A. Right.

10 Q. High dubious, if it had discussed the
11 future. Of these eight of them are, in fact, between
12 '95 and '96, correct?

13 A. I read it quickly. I counted quickly.

14 MR. YALOWITZ: Let's check. We have proven
15 that Mr. Rochon's math skills are not perhaps as strong
16 as --

17 THE WITNESS: Eight from '95 and '96.

18 BY MR. ROCHON:

19 Q. Now you have criticized Dr. Lori Allen for
20 using a media poll regarding media consumption from
21 1999, because the poll wasn't taken during the period

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1 asked me, so I won't get into it.

2 Q. All right. Let go to Page 20 of your
3 report. One of the examples you cite from May 14th,
4 '95. And it's reported there by him, which you then
5 relay to us, that the Palestinian police closed down
6 the premises of Al-Watan? Do you see that one?

7 A. Yes, I see it.

8 Q. Okay. Al-Watan is affiliated with Hamas.

9 A. Yes.

10 Q. So this is an example of the PA being
11 punished for incitement related to trying to stop the
12 peace process, wasn't it?

13 A. That's not what it says here. I don't know
14 what the original articles were. It says here,
15 articles of an insightful nature against the
16 Palestinian Authority.

17 The pattern here, there could have been
18 some things that were critical, you know, of the
19 Palestinian Authority criticism of the peace process or
20 whatever.

21 The whole range of examples here, and you

55 (Pages 214 to 217)

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1 can obviously read through them. If they were five
2 pages of examples like that, but they are not, whole
3 range of reasons, anything that's -- some of the
4 examples were people were forced to sign not to publish
5 anything potential provoking the PA. It's not just the
6 issue of Hamas.

7 Q. Go then, if you like, to Page 17. The
8 example from the 9th of April 1998.

9 A. Yes.

10 Q. You see it involves the arrest of Reuters
11 correspondents, correct?

12 A. Yes.

13 Q. And you rely on that in your paper in your
14 report, correct?

15 A. Let me just read it.

16 (Pause)

17 MR. YALOWITZ: What is the question? I
18 think the witness may need the question.

19 MR. ROCHON: I was just orienting the
20 witness to the incident.

21 Now, in fact, that occurred there, the

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1 no free expression.

2 In fact, one of the things he writes, if
3 you're commenting on the number that I brought here,
4 from 1999 and 1998, first of all, there are plenty from
5 1999-92, he said there were fewer examples of arrests
6 or torture, I can't remember which word he was
7 referring to, in the later years because the
8 Palestinian Authority tactics had succeeded and people
9 were imposing self-censorship because they didn't want
10 to have the repercussions.

11 Q. Turn to Page 18 and 19. That's the example
12 from December 1998 that flows from one page to the
13 other. Do you see that?

14 A. Yes.

15 Q. And the portion you quote from his report
16 is that the Palestinian police arrested eight
17 journalists after they covered a march organized by the
18 popular front. You did not include why that it
19 happened, did you?

20 A. What do you mean?

21 Q. That is in this report. You're excerpting

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1 terms of the Reuters issue, that they had published a
2 tape claiming that the PA was responsible for the death
3 of a leader of Hamas. Do you know that that was the
4 basis for this?

5 A. No.

6 BY MR. ROCHON:

7 Q. You don't know what the basis was, do you?

8 A. I'm citing the context that Bassan Bid
9 writes, and the entire report is there as an
10 attachment. He is very, very openly describing a
11 phenomenon related to Palestinian Authority control
12 and press censorship.

13 And the specific examples or range of
14 examples, and he wasn't citing a specific reason
15 particularly against Hamas, he was citing the problem
16 of Palestinian Authority control and censorship
17 irrespective Hamas.

18 So there might have been one or two or
19 three related to Hamas criticisms of the Palestinian
20 Authority. But the absolute explicit message of his
21 report is exactly that there's a tremendous -- there is

Page 221

1 his report?

2 A. The entire thing is an attachment to this
3 report. It's certainly an integral part of the report.

4 Q. It's Exhibit 2 of your report. What it
5 reflects is that they arrested after they covered a
6 march in which the American and Israeli flags were
7 being burned in protest, isn't that right?

8 A. Could be. I don't remember.

9 Q. If they covered the march, and the PA
10 hadn't done anything, you would call that incitement,
11 wouldn't you, if they had video of burning the flags of
12 the Israel and America?

13 A. I don't know why you are making that
14 conclusion.

15 Q. Well, I don't get to explain why I'm making
16 that conclusion.

17 A. Are you asking me.

18 Q. Yes, I am.

19 A. I wouldn't call that incitement. It
20 depends on the context.

21 Q. In any event, the fact that the PA

Page 222

1 restricted journalists who had broadcast the burning of
2 the American and Israeli flags in that incident, does
3 that matter to you at all in regards to the actions of
4 the PA?

5 A. Let me read the item again. Can you show
6 me the exhibit, too.

7 MR. ROCHON: This is 464. This time I'm
8 going to give you the right one.

9 (Marcus Exhibit 464 marked for purposes of
10 identification.)

11 BY MR. ROCHON:

12 Q. And you can look at any portion you like.
13 The one I'm talking about is on Page 26. Have you had
14 a chance to read those five sentences?

15 A. Yes.

16 Q. Okay. In fact, in the report, which is
17 attached in our Exhibit 464, the actual entry for
18 December 1998 includes that American Israeli flags were
19 burnt in protest, correct, in the first sentence?

20 MR. YALOWITZ: Objection to form.

21 THE WITNESS: All of these items were to

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1 of the reporting that is presenting them as Shahids,
2 which is a term of more than just a term of minimal
3 honor. That's the difference.

4 Q. So then, turning and remaining with the
5 December '98 incident for just a second. In fact, you
6 would agree with me, that what's in your report, in the
7 attachment to your report reflects that the PA had
8 acted because they were concerned that the activities
9 of broadcasting the burning of the flags would -- that
10 actually doesn't give the reason there. So I won't
11 speculate on it.

12 You would agree with me that what the
13 reason for this was because of the broadcast of the
14 burning of these flags. I know you rely on the control
15 and this shows dominance and control.

16 But the actions of the PA there were to act
17 against journalists who had demonstrated tremendous
18 disrespect for the two flags of the United States and
19 Israel respectively, correct?

20 MR. YALOWITZ: Object to the form. You
21 have asked him about three questions.

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1 show the issue here is not -- the issue is control for
2 the control, lack of control, the arrest for reporters
3 and journalists just reporting stories and one way or
4 the other for whatever reason the Palestinian Authority
5 was against. And that's what Bassan Bid is critiquing
6 and that's what we are reporting on.

7 BY MR. ROCHON:

8 Q. So, when the PA TV broadcasts events that
9 you deem glorification, that's incitement by the PA and
10 when they thwart those kinds of activities, it's
11 control of the media?

12 A. When the PA has events and sponsors events
13 that are glorification, that is glorification. When
14 the PA reports on events and adds to them -- so let's
15 say, as you'll find in the report, there is examples of
16 these massive funerals for, I think there are a few of
17 them for suicide bombers, not funerals, but I guess
18 events in their honor within days after.

19 When the PA reports on it and the news
20 reporting defines the people as Shahids, that is adding
21 their own honoring and acceptance. And there's a tone

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1 BY MR. ROCHON:

2 Q. It speaks for itself. I withdraw the
3 question. You don't need to answer it.

4 You also reference in your report an
5 incident, I think, in November of 1998.

6 MR. YALOWITZ: Which pages?

7 BY MR. ROCHON:

8 Q. Well, actually you can just go to Page 26
9 of your exhibit. See it?

10 A. Yes.

11 Q. This is one from the 23rd November 1998
12 where the police force has blocked the roads leading to
13 the house of Sheikh Ahmad Yassin. He's the leader of
14 Hamas, right?

15 A. Yes.

16 Q. And they detain some journalists who are
17 going to go there to record television interviews with
18 him, right?

19 A. Yes.

20 Q. Now it is the fact that the interview with
21 the Sheikh and its broadcast could easily create

57 (Pages 222 to 225)

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1 incitement, right?

2 A. Did I include that -- I don't see it. I
3 didn't include that in my report. I brought his report
4 in its entirety. I didn't include it in mine in the
5 examples that I brought.

6 Q. That's what it says.

7 A. Yes.

8 Q. Okay. It is not the case that you cite any
9 examples, nor does he; that is, nor does the person who
10 wrote the report that you rely upon. Neither you nor
11 him cite any examples where the PA had coerced
12 journalists to try to force them to report anything
13 that you would call incitement, correct?

14 If you don't understand the question, say
15 "I don't understand."

16 A. Please repeat the question.

17 Q. All right. I won't repeat it. I will
18 rephrase it. You do not rely on any instances that
19 suggest that the PA punished reporters for not
20 reporting incitement, for not engaging in
21 glorification, do you?

Page 227

1 A. No.

2 Q. And what you cite are instances from before
3 the time period in question where the PA restricted in
4 some way media reporters or journalists, correct?

5 A. Restricted and, as I said, asked to sign
6 commitments not to harm PA interests. Members of
7 Criminal Intelligence told them not to publish anything
8 that potentially could provoke PA. Editor writes, I
9 impose self-censorship because I know the contrary
10 would upset the PA. That is what I was describing. A
11 little bit different than your summary.

12 Q. All right. What you haven't relied on in
13 your report is any instances where the PA forced a
14 broadcast of certain information. You don't rely on
15 anything that suggests that, do you?

16 A. What I'm saying is that, when you have the
17 whole, I don't know how many examples I brought here,
18 of sermons, for example, where repeatedly Jews were
19 demonized, and there are a number of examples of
20 calling for the killing of Jews.

21 And there were many, many more in addition,

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1 humanization, hate and the same religious leaders
2 continue to appear on television. If we see that for
3 doing minimal things people were arrested and stopped,
4 could not have happened consistently over a period of
5 four or five years, this hatred and calls for death and
6 killing. This couldn't have happened over five year
7 period, if the Palestinian Authority wasn't behind it.

8 Also, it's noteworthy, it started just
9 about exactly the same time as Intifada. Started on
10 October the 1st. First sermon specifically started
11 really with the sermon by Abdul Kolivia on
12 October 13th.

13 Q. You said a lot there. So I'm going to stop
14 you for a second. I think you were done, though.

15 A. Yes.

16 Q. Okay. So you said that none of those
17 sermons and all that activity could have occurred
18 unless the PA did what?

19 A. Unless the PA was behind it. It could have
20 been, if one would have slipped through during the
21 period of Intifada, I would say he didn't know it was

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1 happening. The fact it was over and over and over
2 again.

3 Q. There's a difference between behind it and
4 knowing it's happening. Are you suggesting that the PA
5 knew it was happening and didn't stop it or the PA was
6 behind it in the sense of directing the message?

7 A. Behind it. Directing the message.

8 Q. What do you rely on for that, other than
9 the fact that it occurred over a long period of time.
10 I'm going to take you at your word that it occurred,
11 that there was glorification, that it went on for
12 years, all that stuff that you just said. I'll accept
13 it for purposes of this question.

14 What do you rely on the PA being behind it
15 other than the fact that it occurred?

16 A. The amount of control that we see from
17 Bassan Bid's report. The fact that the Palestinian
18 Authority owned the station. It would be impossible
19 for a message so extreme, we are not talking about
20 moderate, something that's borderline, extreme messages
21 calling for genocide, could not have happened if the

58 (Pages 226 to 229)

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1 Palestinian Authority wasn't behind it.
 2 We find the same message in Al-Hayat
 3 Al-Jadida by a senior Palestinian Authority religious
 4 official who put it in writing calling for the
 5 annihilation of the Jews as Islamic destiny. These
 6 things would not have happened, could not have happened
 7 so consistently were there not some direction. I'll
 8 even go beyond that and I will quote, if you would
 9 allow me to find this here.

10 Q. Are you quoting your own report?

11 A. Yes. In 2010.

12 Q. Where are you reading from?

13 A. Page 21.

14 Q. Reading your report?

15 A. Reading from my report. You are asking me
 16 why do I assume that the consistent calls for the
 17 killing of Jews for so many years could not have been
 18 accidental, had to be directed from the top.

19 In 2010 the head of the official media
 20 Yasser Abd Rabbo was --

21 Q. You're reading from page --

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1 council.

2 I think if the head of the media is telling
 3 us that it is the government's mouthpiece attempting to
 4 dictate and direct, I think we can also include that
 5 together with the other reports to say that the
 6 consistent calls for the killing of the Jews was part
 7 of the attempt to direct society, as it saw fit.

8 Q. So this is a statement of Yasser Abd Rabbo,
 9 May 15, 2010?

10 A. He's described what had been up until then.
 11 He didn't say this happened the year before. This has
 12 been Palestinian television.

13 Q. I asked you a question. You might as well
 14 answer it. This is from May 15, 2010?

15 A. Correct.

16 Q. And it does not say in this document that
 17 the TV had been the mouthpiece of the government, does
 18 it? It says: With this change it won't be the
 19 mouthpiece of the government.

20 A. That is correct. That's what it says. It
 21 won't be the mouthpiece of the government with an

Page 231

1 A. Page 21.

2 Q. Of what?

3 A. Number 444.

4 Q. Thank you.

5 A. Yasser Abd Rabbo talks about the official
 6 media and that Mahmoud Abbas had announced that he
 7 wants to change the current status that had been in
 8 effect all along and create a public council for
 9 Palestinian Broadcasting and TV. It will be
 10 subordinate, as he writes here, but he wants to have
 11 this public council. And then the last sentence here
 12 such that the TV will not be the mouthpiece of the
 13 government with the attempt to dictate to society and
 14 direct it, as the government sees fit.

15 He's defining the current situation, and
 16 it's not just 2010, he's defining what has been
 17 Palestinian Authority television. It has been the
 18 mouthpiece attempting to dictate.

19 And this person who is saying this is the
 20 head of the official media and he's talking about Abbas
 21 wanting to have a change in appointing a public

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1 attempt to dictate.

2 Q. Is there anything in there which Mr. Yasser
 3 Abd Rabbo says that in the past we have dictated what
 4 the media would report?

5 A. I think the only way to interpret that
 6 sentence is exactly as I'm interpreting. He said,
 7 otherwise, there is no change. He said it wants to be
 8 something than what it is. We want to have something
 9 new.

10 Q. The description of whatever change he was
 11 proposing or discussing there is, doesn't, you would
 12 agree with me, purport to be a description of how
 13 things used to be or purport to be a description of
 14 what, on the Second Intifada, on its face, it doesn't
 15 purport to be that?

16 A. It's defining Palestinian television up
 17 until that time.

18 Q. You are interpreting this statement to mean
 19 that the PA directed what was on PA TV during the
 20 Second Intifada?

21 A. This is one of the indications, yes.

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1 Q. I'm asking whether you are interpreting
2 this statement to that effect?

3 A. During the whole period of PA TV.

4 Q. You are aware that PA TV would occasionally
5 report things that would criticize the government?

6 A. You want to give me an example.

7 Q. I'm asking whether you are aware of that.
8 You watch TV every day. They have criticized the
9 government on occasion?

10 A. I'm sure they have.

11 Q. So when they criticize the government, is
12 the government directing them to criticize the
13 government?

14 A. There is a difference between an occasional
15 person who might be interviewed and might criticize the
16 government and a consistent pattern. One of the things
17 that's important for us in researching Palestinian
18 television is to look for patterns.

19 And when we see something repeating over
20 and over and over again, that's when we are coming from
21 a controlled structure, that is when we can conclude

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1 that this is something that's not coincidental. If
2 there's something isolated that happens one time, we
3 don't see it as a pattern.

4 I can give you an interesting example. The
5 beginning of 2010, there hadn't been for a number of
6 years, calls on Palestinian television to kill Jews.
7 And then in 2010, there was one isolated example.
8 Palestinian Authority later on said it was because the
9 main sermon preacher couldn't get there. We stopped
10 presenting that, when we found that out.

11 So we are looking for patterns and not
12 exceptions. And this was the pattern that we saw.

13 Q. So I'm going to give you Exhibit 465.

14 (Marcus Exhibit 465 marked for purposes of
15 identification.)

16 BY MR. ROCHON:

17 Q. This the from the Palestine-Israel Journal
18 from 2003.

19 A. I'm going to have to look at this.

20 Q. It's written by Mohammed Daraghmeh. Do you
21 know who he is?

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1 A. The name is familiar. I can't place it
2 right now.

3 (Pause)

4 Okay.

5 Q. Mr. Daraghmeh is an AP reporter stationed
6 in Nablus. The document that you have in front of you
7 shows him criticizing some of the coverage in the PA
8 media for its tastelessness and inappropriateness
9 regarding the Intifada, correct? I mean there's parts
10 of it that criticize what went on, right.

11 Just to give you one example, top of Page
12 2.

13 MR. YALOWITZ: Are you withdrawing the last
14 question? Do you want to ask him another question?

15 MR. ROCHON: I think the witness indicated
16 he wanted an example. So I think -- I'm not
17 withdrawing it. I'm now giving an example. Top of
18 Page 2, for instance, he says he saw something on TV
19 that troubled him. Correct?

20 MR. YALOWITZ: Okay. Object to the form.
21 Compound. You have asked him too many questions at

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1 once.

2 BY MR. ROCHON:

3 Q. I'll change it up for you. Do you see the
4 top of Page 2?

5 A. The first paragraph? As long as we're
6 talking about --

7 Q. Where he says, last Ramadan I saw --

8 A. Yes. What is the question?

9 Q. He's criticizing some things that he saw in
10 the media, right, as being insensitive?

11 A. Yes. Something on a local TV station.

12 Q. Sure. But what he says regarding the
13 freedom to document and publish regarding the conflict
14 on Page 1, he indicates, and I quote, the Palestinian
15 media have great freedom to document and publish the
16 daily events of this conflict, close quotes.

17 That's what he says, right, under freedom
18 and censorship?

19 A. Yes.

20 Q. And the very first sentence of this piece
21 by Mr. Daraghmeh notes that journalists have only one

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1 story worth covering at this time in 2003. And that
 2 was, of course, the Intifada?
 3 A. Correct.
 4 Q. And you would agree with me that the most
 5 significant news story in the occupied Palestinian
 6 territory from 2000 to 2003 was the Second Intifada and
 7 all of the events related to it, Israeli response
 8 included?

9 A. The most covered story?

10 Q. The most important story.

11 A. The most important story in the
 12 Palestinian -- was this story.

13 Q. So it's no surprise there was rampant
 14 coverage of it, correct?

15 A. The story was -- story of suicide bombings,
 16 the story of the violence was equally important in
 17 Israel. Israel remained having regular broadcasting,
 18 it had news stories about it, it had special reports
 19 when there would be a terrorist attack, it reported
 20 what was going on.

21 But the main framework of television

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1 it, in running clips, many, many clips a day, not just
 2 a clip a day, many, many clips.
 3 Some more violent, some less violent, some
 4 depicting violence between soldiers, some calling for
 5 children to be Shahids and some of them using the words
 6 "how sweet is martyrdom for children when I embrace
 7 you, oh, my land". So there was a constant, constant,
 8 it wasn't just an issue of 90 percent of the news. So
 9 that's why I'm just explaining that it's not just an
 10 issue of news coverage.

11 Q. All right. I hear you. Mr. Daraghmeh goes
 12 on to say under Freedom and Censorship, as I have
 13 already asked you, that the media have great freedom to
 14 document and publish the daily events of the conflict.
 15 You see that, right?

16 A. I see what he's writing.

17 Q. And do you quarrel with it?

18 A. What he would be describing here are the
 19 daily events of the conflict. The daily events of the
 20 conflict was what the Palestinian Authority wanted
 21 published.

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1 remained, Palestinian television framework was
 2 canceled. They had continuous, continuous coverage.
 3 When there was nothing to report, then there were clips
 4 and more clips and more violence clips.

5 It's when you -- you just have to know what
 6 you're saying when you are saying continuous -- not
 7 like 90 percent of the news was about this. The entire
 8 television structure turned into a structure just --
 9 not just reporting, but just generating it as well.

10 Q. The way that this reporter Daraghmeh put it
 11 was that the subject accounted for nearly 90 percent of
 12 all news coverage in the occupied territories and
 13 Palestinian journalists are now fully occupied covering
 14 events surrounding their nation's daily struggle for
 15 existence.

16 A. That is his wording.

17 Q. And do you have a quarrel with that
 18 wording?

19 A. It was beyond, like I'm saying, it's beyond
 20 the news coverage. It was -- the entire television
 21 broadcasting was involved in this, in the promotion of

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1 So certainly they had freedom to document
 2 and publish the daily events of the conflict. It's not
 3 saying here that they press freedom. It's not saying
 4 that the government isn't sending messages through the
 5 religious establishment, what sermons that they want.
 6 It's talking about something completely different than
 7 what I'm talking about.

8 Q. In fact, he discusses that the internal
 9 Palestinian issues are heavily censored, correct?
 10 That's the next sentence.

11 A. Yes.

12 Q. Isn't it a fact that where the PA had
 13 cracked down on censorship, there were incidents that
 14 were cited in Exhibit 2 that you rely on, were
 15 incidents where the PA was being criticized and that's
 16 what caused the PA to take action?

17 A. The PA was -- if you would like, I'll go
 18 through all these sources and read the report again. I
 19 don't think that's what the message of the report was,
 20 that is only cases where the PA was being criticized.

21 But even so, again, before I would answer I

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1 would have to read through the report again and see
2 what he's saying. Because it was -- anything that the
3 language was that would be criticizing or undermining
4 or possibly more than that, I don't know if it was
5 exclusive to that.

6 Q. You referenced several times the PA, in one
7 way or another, claimed controlling sermons or -- you
8 cite not one instance of, in this period, 2000 to 2003,
9 of any evidence the PA actually doing that, that is
10 providing a sermon to an Imam or another religious
11 figure to give. You don't cite any examples of that,
12 do you?

13 MR. YALOWITZ: Object to the form.

14 Compound.

15 BY MR. ROCHON:

16 Q. You can answer that. I'll repeat it, if
17 it's difficult. Your report does not cite any examples
18 of the PA actually providing text to any Imam or other
19 Muslim religious leader, does it?

20 A. That's correct.

21 Q. You have to infer -- and, in fact, do you

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1 language. Every one of them had their own style of
2 promoting this. So I don't think they were handed
3 sheets, but it's clear they would not have all been
4 giving the same message that you should be seeking
5 Shihad or you should be seeking death.

6 One said, we'll blow them up in Tel Aviv,
7 we'll blow them up in -- blow ourselves up amongst
8 them. They were all saying the same thing in different
9 language. So it's clear that they didn't just all wake
10 up one day and say, oh, let's do this. But this was
11 coming directly from the top, again, considering that
12 the PA was so controlled.

13 Q. You cite in your report at Page 20, at the
14 bottom of Page 20, that the -- this is after your
15 section on intimidation you say under, where it says
16 the official Palestinian Authority media, you say,
17 quote, the PA has direct control over its own official
18 media, close quote. You see that?

19 A. Yes.

20 Q. One of the things you cite for that is from
21 Nabil Khatib, who we have referenced a couple of times.

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1 believe the PA provided text to the ministers, excuse
2 me, to the Imams or other religious leaders?

3 A. I don't think they provided the text.

4 There was a variation between each particular religious
5 leader on how they promoted the killing of Jews. It
6 didn't seem like there was one person who was writing
7 them.

8 But the fact is there was a common
9 denominator. There was one who say kill the Jews
10 wherever you find them, another one said, a 14 year old
11 boy told me he wants to blow himself amongst the Jews.
12 And I told him, when he grows up, I wish he should
13 become a Shahid.

14 Each one was using his own -- and then
15 there was another one who said that a person has to --
16 a person was created to be, to fight a Jihad and to be
17 a Shahid, to be martyr. And if he doesn't want to be a
18 martyr, he doesn't try to be a martyr, he's going to
19 die as in the death of a Jialei. This is the pre-Islam
20 period without faith.

21 So every one of them said it in their own

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1 You indicate that the PA -- you see that? You are
2 quoting him, right? The PA determines the official
3 policy of the newspaper. Bottom of Page 20.

4 MR. YALOWITZ: I'm looking at the bottom of
5 Page 20. I don't see it.

6 MR. ROCHON: Great. You're in the right
7 place.

8 MR. YALOWITZ: Are we under Al-Hyat
9 Al-Jadida?

10 BY MR. ROCHON:

11 Q. Yes. PA determines the official policy of
12 the newspaper. See that?

13 A. Yes.

14 Q. What does it -- according to your report --
15 which part of the official policy of the newspaper does
16 the PA supposedly determine. Its foreign topics is
17 what it says, right?

18 A. Yes.

19 Q. It doesn't say that it was controlling,
20 excuse me, determining domestic topics.

21 A. Yes.

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1 Q. Am I right?

2 A. In this particular sentence it's what it
3 says.

4 Q. And as far as what the basis was for his
5 statement here, even as to foreign topics, you don't
6 know what the basis of that was, do you?

7 A. I'm just reading this. PA determines the
8 policy of the newspaper regarding foreign topics. I
9 would assume that means interrelations between, having
10 to do, you know, with the countries with Israel. He
11 adds, sometimes Israeli and foreign journalists who
12 cover the PA seem surprised that democratic freedoms
13 are so limited.

14 I guess that's not -- I'm sorry. What is
15 it?

16 Q. All right. You answered my question.

17 A. Okay.

18 Q. I would like to now turn further to the
19 issue of the religious incitement that you have alluded
20 to several times today. You have referred --

21 MR. YALOWITZ: Would you like a break

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1 A. Correct.

2 Q. Okay. I show you what will soon be marked
3 as 466.

4 (Marcus Exhibit 466 marked for purposes of
5 identification.)

6 This is another article by Isabel Kershner,
7 who interviews you, as you said, often

8 MR. YALOWITZ: Objection. Misstates the
9 testimony.

10 BY MR. ROCHON:

11 Q. You said earlier she --

12 A. A number of times.

13 Q. You're going to be free to look at any
14 portion of that you would like, but the part I'm going
15 to ask you about is on the third page of her article.

16 A. Let me just skim through it quickly.

17 (Pause)

18 Q. Have you had a chance to look at it?

19 A. Yes.

20 Q. Look at Page 3. This is an article from
21 the Jerusalem Report from December 21st, 1998. And in

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1 before we get on the next topic?

2 MR. ROCHON: Do you want to break now?

3 THE WITNESS: Only five minutes.

4 MR. ROCHON: Okay. Let's go off the
5 record, please.

6 (Brief Recess)

7 BY MR. ROCHON:

8 Q. Back on the record. So several places in
9 your report you refer to, I'm quoting now, something
10 called quote official PA TV sermons. I just want to
11 make sure we understand what we are talking about.
12 When you say "official PA TV sermons" in your report
13 what do you mean? What does the word "official" mean
14 there?

15 A. It's Official Palestinian Authority
16 Television.

17 Q. Okay. Is there any unofficial -- PA TV you
18 consider to be PA.

19 A. Yes.

20 Q. So when you say official PA TV sermons,
21 what we are really talking about are sermons on PA TV?

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1 it they are discussing, the page I'm pointing you to,
2 references comments from a gentleman named Abu Ayyash.
3 Do you know who he is?

4 A. Yes.

5 Q. He's the head of the PBC, the Palestinian
6 Broadcasting Company. And in it he was addressing the
7 criticism that was being applied as to what was being
8 said by the Imams, right?

9 A. In which paragraph?

10 Q. He's discussing incitement and the
11 criticism related to it. In the middle of the
12 paragraph begins "at PBC headquarters", go down about
13 12 lines. It says: When it comes to the subject of
14 incitement, however. Do you see that?

15 Just please get to the point where it
16 says -- the Court Reporter needs to take down the
17 sounds. So either speak clearly or not at all.

18 A. I'm just sort of reading to get to the
19 point where you want me -- okay.

20 Q. There he actually is discussing the subject
21 of incitement. You see that he pulls out copies of

Page 250

1 your reports.

2 A. Yes.

3 Q. He criticizes PMW as a Beit Agron
4 production. That just means he thinks it's essentially
5 a voice of the Israeli government?

6 A. Yes.

7 Q. And then he says, I'm quoting, if some
8 sheikh says live on TV that all the Israelis should be
9 thrown into the sea, what can I do, cut off his tongue?
10 Do you see that?

11 A. Yes, I see that.

12 Q. He was the head of PA TV?

13 A. Yes.

14 Q. So he suggests in this article that in
15 fact, he was not in position to direct or control what
16 the sheikhs were saying on the TV, right?

17 A. As he's being brought by journalists pages
18 of examples of hate incitement, hate promotion and he
19 has to explain it. So, of course, he says he's not
20 responsible. I don't think there can be validity,
21 what's he going to say, oh, well, this is what we are

Page 252

1 A. Correct.

2 Q. And he's an Islamic religious figure,
3 correct?

4 A. Yes.

5 Q. Now you are aware that after this statement
6 was made the PA arrested him for making it?

7 A. No, I'm not.

8 Q. Do you ever track when any of these sheikhs
9 or Imams were arrested or punished for the insightful
10 things they said?

11 A. If it's reported, then we would certainly
12 track it. I did not hear until this moment that you
13 are saying he was arrested.

14 MR. ROCHON: Mark this 467, please.

15 (Marcus Exhibit 467 marked for purposes of
16 identification.)

17 BY MR. ROCHON:

18 Q. I show you Exhibit 467. I would like you
19 to -- this is from phill.com. But it covers the
20 comments of Halabiah.

21 A. I want to read this.

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1 telling him to do. Of course he's not saying that.
2 He's being accused.

3 Q. He goes on to say in that same section, we
4 are journalists, mirrors, reflectors. I'm not here to
5 lie or make propaganda. Do you see that?

6 A. I see that.

7 Q. You were aware of his views on this matter,
8 right?

9 A. Certainly, I'm aware of his views.

10 Q. In your report you certainly don't
11 acknowledge that, that the head of PA TV actually
12 denies the allegations you bring?

13 A. I don't think there's any surprise that the
14 had of PA TV is going to deny that they can control and
15 incite. That's why we look at an independent report
16 like the report of Bassan Bid.

17 But -- that's my answer.

18 Q. One of the things you cite to, if you turn
19 to Page 25 of your report, please. You cite at the top
20 of Page 25 of your report a quote from a Dr. Halabiah,
21 correct?

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1 (Pause)

2 Do you see where it reports that he was
3 arrested after making the statements?

4 A. I see the report. I would want to get a
5 different source than that.

6 Q. Okay. So it certainly doesn't refresh your
7 recollection either way?

8 A. No. I never saw this before. It wasn't
9 something that we ever saw reported in the Palestinian
10 press. And I know that there have been times when
11 Palestinian Authority would be criticized for one thing
12 or another and they would possibly arrest someone to
13 show it. But this wasn't even publicized. I don't
14 even know about the truthfulness of this statement. I
15 would certainly question it.

16 Q. I'm done asking you questions about it, if
17 it doesn't refresh your recollection. Go to Page 26 of
18 your report. Previously I asked you about official PA
19 TV sermons, remember that, just about five minutes ago?

20 A. Yes.

21 Q. The top of 26 it says, refers to in your

Page 254

1 report, quote, teaching -- the very first line.
 2 Teachings from the official PA religious leaders.
 3 A. Yes.
 4 Q. What does "official" mean there?
 5 A. If you look at the source before that, you
 6 had Sheikh Muhammad Abd Al HadiLa'afi, who was
 7 responsible for Religious Teaching and Instruction in
 8 the Office of the Waqf. And here he's talking about,
 9 he's quoting an Islamic source, he talks about the day
 10 of resurrection, the hour will not come without the
 11 victory of the believers, meaning over the monkeys and
 12 pigs, Jews and with their annihilation. He's talking
 13 about genocide of Jews here as a precondition.
 14 Q. Let's assume he's saying terrible things.
 15 My question to you doesn't go to what he said. I'm
 16 trying to get --
 17 A. He's an official, he's a senior PA
 18 official. He's an official religious leader.
 19 Q. When you say "senior PA official", I'm
 20 exploring with you, your use of that word. He's an
 21 official because of his what?

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1 A. Position in the Waqf in the religious
 2 establishment.
 3 Q. So because of his position in the religious
 4 establishment, you call him a PA official?
 5 A. Correct.
 6 Q. All right. You refer to official in that
 7 line that I read to you on the top, official PA
 8 religious leaders. You see that? Plural.
 9 A. Yes, I do.
 10 Q. On the Page 425 you quote Dr. Muhammad
 11 Ibrahim Madi.
 12 A. Yes.
 13 Q. He's a, you refer to him as a Palestinian
 14 Authority Cleric?
 15 A. Yes.
 16 Q. That means he's a Cleric in the area that
 17 the Palestinian Authority governs, right?
 18 A. Correct.
 19 Q. Okay. That doesn't make him an official of
 20 the Palestinian Authority. It just means that's where
 21 he practices his faith, whether one likes the way he

Page 256

1 expresses it or not, correct?
 2 A. Ibrahim Madi appeared dozens and dozens of
 3 times giving religious leaders sermons on Palestinian
 4 Authority television. That's probably why I used the
 5 Palestinian Authority Cleric, because he was, in fact,
 6 if I remember correctly, he had a weekly program
 7 teaching Islam. In that sense, unofficial TV, he's
 8 appearing on a regular basis. He might not have an
 9 official title, but he is part of the television
 10 establishment.
 11 Q. He's got -- let's assume that your
 12 recollection is correct, and he's got a weekly show on
 13 TV and he's a religious leader?
 14 A. Yes.
 15 Q. That doesn't mean he's a member of the
 16 Palestinian Authority's government, does it?
 17 A. No, he's not part of the government.
 18 Q. The beginning of the Second Intifada became
 19 very violent very quickly, correct?
 20 A. Yes, it became violent very quickly.
 21 Q. And a lot of Palestinians were killed in

Page 257

1 the first few days of the Intifada, right?
 2 A. I don't remember the numbers.
 3 Q. How many were killed in the very first
 4 march?
 5 A. I don't remember. I don't remember how
 6 many Palestinians were killed in the first march.
 7 Q. Don't you think on the question of what
 8 would have caused people to want to react violently
 9 that it would matter whether Palestinians were being
 10 killed?
 11 A. If Palestinians were being killed. You're
 12 making it sound like there is a shooting gallery and
 13 people are shooting -- Israelis are shooting
 14 Palestinians. That certainly was never happening.
 15 There was a lot of violence going on and people were
 16 being killed, and Palestinians were being killed as
 17 well in the violence.
 18 Q. Let me ask you, in your Rebuttal Report in
 19 particular, you cite, and in your original report, you
 20 recite a lot of comments from a variety of political
 21 and other public figures about the start of the

65 (Pages 254 to 257)

Page 258

1 Intifada.

2 A. Yes.

3 Q. Ziyad Abu Ein, Muhammad Dahlan,
4 Imad Faluji -- you remember that part of your report?

5 A. Yes. I don't think they all spoke about
6 the beginning, but they spoke about different periods.
7 Certainly Faluji spoke about the outbreak of the
8 Intifada. And we also have some others we talked
9 about.

10 Q. So there's a series of quotes sort of at
11 the end of your main report that run through some of
12 those. I think they are on, starting on Page 55. And
13 this is the section of your report that you title
14 Palestinian Authority's Leaders Acknowledge PA
15 Responsibility and Control?

16 A. Right.

17 Q. You see that?

18 A. Yes.

19 Q. These are mostly political figures,
20 correct?

21 A. Yes.

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1 Q. Right?

2 A. Yes. I think they are also political
3 figures.

4 Q. In several --

5 A. And columnists as well.

6 Q. In several instances in this collection of
7 quotes that you include from 55 through --

8 A. 62.

9 Q. 62. These individuals were talking about
10 who should get credit, for lack of a better phrase, for
11 the Second Intifada, correct?

12 A. I think there were one or two of them.

13 Q. For instance, Ashraf Al-Ajrami on Page 56.

14 A. Yes.

15 Q. Have you looked at the entire clip of that
16 interview -- those statements by Mr. Al-Ajrami?

17 A. I'm sure at the time, yes. I certainly
18 don't remember now what was in the rest of the context.
19 I know --

20 Q. This is from June 2009, right?

21 A. Yes, correct.

Page 260

1 Q. That was a TV show in which he was debating
2 a member of Hamas?

3 A. Correct.

4 Q. And politically for the Palestinian
5 Authority there is a challenge to it from Hamas from a
6 radical Islamic group, correct?

7 A. Correct.

8 Q. In fact, this interview would have happened
9 after Hamas had taken over Gaza in the spring of 2007,
10 right?

11 A. Yes.

12 Q. And for the Palestinian Authority one of
13 the greatest challenges to its stability is, in fact,
14 Hamas, isn't it?

15 A. One of the greatest challenges to its
16 stability. Great political threat. No doubt about
17 that.

18 Q. Therefore, frequently politicians have to
19 make statements trying to ensure that the populous will
20 remain loyal to whatever party they belong to; in the
21 instance, Fatah for Mr. Ajrami?

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1 MR. YALOWITZ: Object to the form.

2 BY MR. ROCHON:

3 Q. I'll rephrase it. You have seen these kind
4 of debates before within Palestinian society because
5 it's reported in the media, just like this one for
6 Ajrami between Fatah and Hamas, right?

7 A. There have been debates, yes. They ran
8 elections against each other.

9 Q. Do you know if this was an instance of Mr.
10 Ajrami debating or arguing with someone from Hamas?
11 Hamas?

12 A. I don't remember. You said it was. The
13 point of it is, the statements here which were
14 challenged, the greatest number of prisoners --
15 security forces Arafat is, without question, Yasser
16 Arafat is the master of resistance, gives examples here
17 of the terrorist attacks that were carried out by
18 members of his own forces. In each of these attacks, I
19 don't remember the numbers, but these were attacks in
20 which people were killed.

21 Q. Civilians?

Page 262

1 A. I don't remember which these were.

2 Q. I'm sorry. You are familiar with Ein-Arik,
3 Wadi Al-Haramiyeh, Sorda as being attacks on Israeli
4 soldiers, aren't you?

5 A. I don't think this was exclusively Israeli
6 soldiers who were killed.

7 Q. You don't know?

8 A. If I remember correctly, this also involved
9 civilians who were killed. Best of my memory. I don't
10 remember the specific incidents.

11 Q. What Mr. Ajrami is saying, according to
12 your report, in referencing the security forces sector,
13 he says that they were the ones who bore arms and
14 carried out the greatest and most important operations.
15 See that?

16 A. Yes.

17 Q. You put in parentheses; i.e., terror
18 attacks. He didn't say that, did he?

19 A. The term amaliyah, term operations that
20 they use was used -- in fact, you were citing Wafa
21 earlier. In many of its statements referring even Wafa

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1 Q. You would make a differentiation, other
2 people would make different differentiations, but it
3 is -- almost everyone would agree that there's a big
4 difference between attacks on civilians through suicide
5 bombings and shooting of soldiers, right?

6 A. There is a difference, yes.

7 Q. And here he's talking about the most
8 important operations, once we leave out your
9 parenthetical, against the Israeli occupation and
10 especially against soldiers. You see that?

11 A. Yes.

12 Q. And then he goes on to name those three
13 attacks?

14 A. Correct.

15 MR. YALOWITZ: Object to the form. It's
16 not what it says.

17 BY MR. ROCHON:

18 Q. Then it goes on to name those three attacks
19 Ein-Arik, Wadi Al-Haramiyeh and Sorda?

20 MR. YALOWITZ: Object to the form. That's
21 not what it says.

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1 to terror attacks that it was condemning, it was
2 referring to them as amaliyah. That was a term that
3 was used as a euphemism for these attacks.

4 Q. Was it a term that was only used for
5 attacks or does that word that translates as operations
6 sometimes used to refer to things that are not terror
7 attacks?

8 A. The word amaliyah was the word that was
9 used for suicide terror attacks. During this period no
10 one would refer to a stoning incident as a amaliyah.

11 Q. What about a shooting of a soldier?

12 A. The shooting of a soldier would have been
13 called amaliyah as well.

14 Q. You may understand shooting of soldiers to
15 be terror attacks, but you would also agree that some
16 would differentiate between shooting of soldiers and
17 blowing up of civilians, correct?

18 A. Yes, there's a difference. It also is a
19 difference if a soldier is shot in a combat situation,
20 or if a soldier is shot when he's not in combat
21 situation.

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1 MR. ROCHON: You have objected twice to it.

2 MR. YALOWITZ: You re-asked it so I
3 re-objected.

4 BY MR. ROCHON:

5 Q. Answer the question, please.

6 A. I'm not sure what the question was.

7 Q. All right. Mr. Ajrami, when he made these
8 statements was not in the Palestinian Authority, was
9 he?

10 A. He was not an official at the time. Former
11 Minister, yes.

12 Q. These claims by various political figures
13 for responsibility for the intifada, are you open to
14 the possibility that political figures sometimes don't
15 tell the truth?

16 A. Those are two separate questions.

17 Q. Answer this one. Are you aware of the
18 possibility that political figures sometimes don't tell
19 the truth?

20 A. Correct.

21 Q. All right. You don't have an ability

67 (Pages 262 to 265)

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1 yourself, as a human lie detector or a psychologist to
2 always discern when someone is telling the truth, do
3 you?
4 A. As a researcher, you look at the message,
5 look when the message was said and you look and see if
6 it's the same message that's coming from different
7 people.

8 These are messages also that are consistent
9 with everything else that we have seen from the
10 promotion of terrorism to glorifying terror.
11 Specifically talks about the statement of Abbas, which
12 we open with here, which it's not said in any context
13 of criticism of Hamas and it's not said in any
14 context -- he's talking about prisoners should be
15 released. And he said they did what we ordered them to
16 do. He said "we", Palestinian Authority. He said he
17 felt it absurd that we the leaders are sitting at one
18 table negotiating, when the ones who just did what we
19 told them to do, essentially saying they were just
20 following orders, they are in prison.

21 He's clearly talking about people who kill,

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1 we are fighting each other. They kill and kill. I
2 ordered my brother to carry, you ordered your soldier
3 to kill, I ordered my brother to carry out the duty of
4 the resistance.

5 This person killed and the other person
6 killed. He's talking here about killing. So this is
7 not a political statement in any context of debating
8 Hamas. This is a very straightforward explanation why
9 prisoners should be free because he's saying they were
10 just following orders from the leadership.

11 Q. You have gone to that Abbas statement. I
12 was asking you before about Ajrami.

13 A. You asked about the whole group of them in
14 general.

15 Q. What President Abbas says in the portion
16 you do quote, once again you have got where he had said
17 that someone had been ordered to carry out the duty of
18 resistance and you insert a euphemism for terror?

19 A. That's right. He says this person killed
20 and the other person killed. He's not talking here
21 about anything less than that.

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1 Q. Not all killings are terror, are they?

2 A. He is talking here about all prisoners. I
3 would assume that even you would admit that some of the
4 prisoners committed terror.

5 Q. Oh, sure. If Israel conducts an
6 assassination of a person, is that terror?

7 A. Explain what you mean by assassination.
8 Give me an example -- Khaled Mashaal.

9 Q. Okay. We'll use that.

10 A. Was the head of Hamas. He was responsible
11 for, and essentially giving the okay directing the
12 religious inspiration for the murder of hundreds and
13 hundreds of Israelis in suicide bombings.

14 He was -- it wasn't an assassination. He
15 was a leading, a leader of the military apparatus and
16 in that sense was a legitimate target.

17 Q. Okay. And if a country were to kill
18 someone like that or someone else knowing that
19 inevitably innocents would be killed as well, family
20 members, is that an act of terror in your parlance?

21 A. We know -- we have statements from Hamas

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1 officials on television calling on civilians to be
2 literally --

3 Q. Human shields?

4 A. Human shields on Hamas TV. The Israeli
5 Government and Israeli Military is known for doing its
6 utmost, and I think the Geneva Convention calls for
7 extreme caution to do the utmost when going after
8 terrorists in areas where civilians exist. And Israel
9 certainly fulfills that, including things like at times
10 even dropping leaflets warning that they are going to
11 be shooting at the terrorists. So Israel's examples of
12 going after terrorists who might have hidden themselves
13 behind civilians is not terrorism.

14 Q. When Abbas says in connection with peace
15 with Israel that the prisoners should be released, he
16 says: What meaning is there to peace with the Israelis
17 if the wanted continues to be wanted, the prisoner
18 continues to be imprisoned and the deported continues
19 to be deported. Do you see that?

20 A. Yes, I do.

21 Q. What he's talking about is, in connection

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1 with any resolution with Israel by way of any
 2 negotiation, the prisoners should be released, correct?
 3 A. Correct. And the reason he gives is
 4 because the prisoner will say to me, what did you get
 5 me; you ordered me; you're responsible for me. The
 6 prisoners are going to tell me, Mahmoud Abbas, I'm in
 7 jail because of you. You told me to commit the crimes.
 8 That's what he's saying.

9 So he is saying that not only did the
 10 Palestinian Authority direct these people through
 11 whatever infrastructure that they controlled, the
 12 people who were sitting in jail, who are there, they
 13 knew that they were doing these actions in the name of
 14 the Palestinian Authority. They are going to tell me,
 15 you ordered me.

16 Q. Then, when Israel releases people who have
 17 done that in connection with negotiations, is that a
 18 problem for you as well? When Israel chooses to
 19 release someone who is involved in what you would
 20 characterize as a terrorist attack?

21 A. When you say it's a problem, that's not

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1 ordered me, you're responsible for me.

2 He's talking here about the cases of
 3 killings. He's not limiting them in any which way that
 4 they can see, limiting it to a specific case, might
 5 have had a specific context that it was different than
 6 others cases.

7 What he's doing here, and that's important,
 8 he defines this -- where is it here -- we were fighting
 9 each other -- essentially -- he was putting -- clearly
 10 he's putting a parallel between Israeli soldiers and
 11 the people who are killing on the other side. He calls
 12 them fighters. He's not limiting them to any specific
 13 context or any specific incident.

14 Q. But the issue of Palestinian prisoners have
 15 been prisoners that have been in Israeli jails since
 16 before Oslo still, right?

17 A. Yes.

18 Q. And so, as he sits there and as he's
 19 talking, you don't know if President Abbas was thinking
 20 of the Second Intifada, pre-Oslo or what was in his
 21 mind regarding what he's saying there. You have to

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1 really a connectable word that's even connected to my
 2 profession -- is it a problem? What I would -- I will
 3 write or comment on how that might impact on peace and
 4 how it might impact on Palestinian Authority and how it
 5 might impact on Israel.

6 But the question "is it a problem" is the
 7 wrong question.

8 Q. You have no way of knowing specifically
 9 what President Abbas was thinking of in terms of
 10 incidents when he was making these statements, do you?

11 A. He's talking about releasing of Palestinian
 12 prisoners.

13 Q. When he made statements such as that he
 14 ordered, or upon ordered sons, brothers or others to
 15 carry out the duty of resistance, you don't know if he
 16 was thinking about a particular action or not, do you?

17 A. What he's saying here is that everyone
 18 who -- he's talking here about all the prisoners. Not
 19 talking here about a specific category. He's talking
 20 about prisoners being released. He's talking about
 21 every prisoner who I don't release is going to say you

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1 interpret it to say he must have been thinking of all
 2 of the actions?

3 A. No, because -- I'll show you an example.
 4 He's talking here about -- this is said February 2005.
 5 It's after the Intifada more or less is winding down
 6 and he says, we were fighting each other. He's not
 7 talking here about the period before -- we were
 8 fighting each other. It's over now. Now we have -- in
 9 fact, in the earlier part he talks about getting on
 10 with peace and economic growth, et cetera. He's saying
 11 we have to move on from what was. Then we were
 12 fighting each other and now we are at a new period.
 13 He's absolutely talking about the -- locks.

14 Q. You are saying that's what he's talking
 15 about?

16 A. The fighting is now over. We have to get
 17 on with it, including the release of prisoners.

18 Q. You and I are talking about what Mr. Abbas,
 19 President Abbas meant when he said those things.
 20 That's what we are doing right now, right?

21 A. We are talking about what he said.

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1 Q. When he said that they have spent many
2 years in prison. How much longer? This was in 2005
3 the alleged people involved in the Second Intifada,
4 many of them hadn't even, some of them hadn't been
5 arrested yet, many of them had not been convicted yet.

6 When he says that they have spent all their
7 life in prison -- spent many years in prison, was he
8 still thinking of something that had happened two
9 before, three years before?

10 A. What he's talking here about is all the
11 years -- talking about many years in prison. It's
12 difficult to say what he means by "the many", but
13 certainly what he's including, there is no doubt he's
14 including all of the period of the violence against
15 Israelis, pre-Oslo, post-Oslo up until now and now the
16 fighting is now over.

17 Q. Now you're saying he meant pre-Oslo and all
18 that whole period. A second ago you said it was clear
19 he was referring to the Second Intifada?

20 MR. YALOWITZ: Objection. Misstates the
21 testimony.

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1 A. I don't know if that's a formal -- I know
2 it's talked about an awful lot.

3 Q. When we began the deposition, I talked
4 about some context for what we are going to talk about
5 today and speaking Arabic, not speaking Arabic and
6 things like that. I want to return to that for a
7 second. You are also not a psychologist, right?

8 A. Correct.

9 Q. And you can't tell us why any specific
10 individual engaged in a suicide attack, why he or she
11 blew themselves up, can you?

12 A. The suicide terrorists who left farewell
13 videos sometimes said why they are doing it. So
14 certainly in those cases we do get a sense of, we hear
15 what they are saying; we hear their farewell messages.

16 Q. Okay. And except for those instances where
17 someone has provided that, which could then be read or
18 listened to or understood, for those who have not done
19 that you can't, based on your work, determine why some
20 individual did something that horrific, right?

21 A. On the individual level a specific person

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1 BY MR. ROCHON:

2 Q. You said he was referring to the Second
3 Intifada. Now you are agreeing me that he must have
4 been referencing people from pre-Oslo as well, right?

5 A. He said the fighting is now over. The
6 context -- he certainly was also talking about the
7 Second Intifada. Because he wasn't talking about the
8 pre-violence. If he's also talking about the earlier
9 prisoners, certainly he's also talking about the
10 earlier prisoners. He is certainly talking about the
11 Al Aqsa.

12 Q. It is contemplated one of the negotiating
13 planks of the Palestinian Authority, that the prisoners
14 would be released in connection with an agreement with
15 Israel, correct?

16 MR. YALOWITZ: Object to the form.

17 BY MR. ROCHON:

18 Q. I'll rephrase it. You understand that the
19 Palestinian Authority, the PLO, one of its terms for an
20 agreement with Israel includes return -- prisoners
21 being released, correct?

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1 might have done, there could be many components.

2 Q. One of the things you discuss in your
3 report, and I think this is it Page 28, you talk about
4 there was a mandate to children to seek Shahada. That
5 came directly from the Palestinian political
6 leadership.

7 A. Yes.

8 Q. I should have turned you to your Rebuttal
9 Report at Page 28, not your main report. I'm sorry,
10 Mr. Marcus.

11 I'm directing you specifically to the
12 language at the bottom of Page 28. The Shahada mandate
13 to children -- and there's a typo -- I think you mean
14 to seek Shahada came directly from the Palestinian
15 political leadership?

16 A. Where are you?

17 Q. Page 28 at the bottom of your Rebuttal
18 Report.

19 A. Yes.

20 Q. All right. So have you seen the language
21 I'm directing you to?

70 (Pages 274 to 277)

Page 278

1 A. Yes.

2 Q. And the examples you cite for that are
3 related authorities Fares Udah. Fares Udah was not a
4 suicide attacker, was he?

5 A. Correct.

6 Q. He was a young boy who was shot while he
7 was apparently throwing stones or planning to throw
8 stones at Israelis, isn't that right?

9 A. That was never reported exactly how he
10 died.

11 Q. Okay. It was reported he left his home
12 with a slingshot, right?

13 A. Yes.

14 Q. He had been known to throw stones, right?

15 A. Correct.

16 Q. At Israeli tanks and soldiers. Yes?

17 A. Yes.

18 Q. Okay. And you have no reason to believe he
19 was armed with a gun when he was shot, do you?

20 A. I don't know that he was shot. I don't
21 know -- can't remember exactly how -- the implication

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1 was, a significant thing here about Fares Udah is, if
2 you read here the many, many examples that I cited here
3 of things like here and in the later report, video
4 clips encouraging young children to want to be Shahids,
5 including language Shahada sweet little boy goes out
6 and you see him with his slingshot throwing stones.
7 You don't see the Israeli soldiers, but you see him
8 fall down to the ground, and the words of the song, how
9 sweet is Shahada, when I'm embraced by you, my land.
10 This video clip was running for a number of years. On
11 Palestinian television we found young girls saying this
12 expression Shahada is sweet.

13 Within this context of all of this
14 promotion we see that Fares Udah made a wreath
15 decorated with photos of himself, having written on it
16 the Brave Shahid Fares Udah. He was going to put
17 himself in a situation where he would be killed.
18 There's a lot of firing going on.

19 Again, I don't know the situation and
20 certainly I find it hard to believe that any soldier
21 would shoot a child intentionally. But there was a lot

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1 of firing going on. And the fact of Fares Udah, he was
2 the one who wanted to be a Shahid.

3 And what I say here about the political
4 leadership, Yasser Arafat saying here, first of all,
5 you have Yasser Arafat presenting him as a role model
6 to other children. Then you have Yasser Arafat saying:
7 Isn't, the child, you know, is grasping a stone facing
8 a tank, isn't the greatest message to the world that
9 hero becomes a Shahid, we are proud of him. You have
10 the top political leader saying it's a great message
11 when the child becomes a Shahid.

12 Q. Just so we are clear, whether one agrees or
13 not with your interpretation, your interpretation, of
14 course, is that what Arafat was saying would -- honored
15 the child and what he had done. Is that fair?

16 A. His becoming specifically a Shahid.

17 Q. And it's important, therefore, if you're
18 going to evaluate what is meant by that to have an
19 understanding of what happened to Fares Udah?

20 A. Yes.

21 Q. And you told me you don't know.

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1 A. At this moment I don't remember.

2 Q. He was shot in the neck while he was
3 throwing stones, wasn't he?

4 A. I don't remember. I have to look it up.

5 Q. 468 please.

6 (Marcus Exhibit 468 marked for purposes of
7 identification.)
8 BY MR. ROCHON:

9 Q. And if you look at the fifth paragraph
10 you'll see from Washington Report on Middle East
11 Affairs, dated January-February 2001. The fifth
12 paragraph begins: Tragically, we know with dreadful
13 certainty what happened to Fares Udah. Do you see that
14 report as to how he died?

15 A. There are so many reports of deaths of
16 Palestinians that are totally not verified and totally
17 false that you don't even know, for example, he might
18 have had a bullet in the neck. Don't know if it was
19 necessarily a Palestinian or Israeli, certainly coming
20 from a Palestinian source like this.

21 So the significant thing here -- and again,

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1 I'm not discussing how he was killed -- the significant
2 thing here is that the death for Allah was promoted for
3 children.

4 And the examples that we have here that
5 Fares Udah was being shown here as a symbol. And the
6 fact that, what I pointed out here is the -- when
7 Yasser Arafat on a number of different occasions went
8 in front of children and told them that, we are
9 saluting the spirit of our hero Shahid -- Fares Udah,
10 Fares Udah, Fares Udah, we are proud of you who
11 represent the steadfastness, the sacrifice, the hero
12 Shahid, Fares Udah, the children of Palestine, the
13 peers, friends, brothers and sisters of Fares Udah.
14 And then the children then respond to him in this big
15 chant, see the whole room of children chanting,
16 millions of Shahids marching to Jerusalem.

17 So that is how they understood his message.
18 We are willing to be the Shahids. All also in the
19 Palestinian Authority was encouraging children to be
20 Shahids. That's the context here.

21 Q. Now for you the important facts are how his

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1 Shahids were then glorified.

2 If you look at this quiz show, there was a
3 quiz show that came on a few years later using,
4 continues to use him. It was -- you would win \$200, if
5 you called in and got the proper name. And the clue
6 was, a national hero, a small child, the knight riding
7 the martyrdom horse. Martyrdom is bliss, paradise is
8 yours, hero of Palestine who carried a stone to
9 confront the tank. The prize is \$200. Martyrdom is
10 bliss.

11 That's the point that was trying to be
12 shown here. Of course, it is significant. In this
13 context I'm talking about, he was used, he was used by
14 the Palestinian Authority as part of this promotion of
15 Shadid for children.

16 Q. He himself, you are not claiming was --
17 that he was influenced by anything he had ever seen on
18 TV, are you? On anything he heard in a sermon -- you
19 are not saying you have any knowledge as to what Fares
20 Udah was motivated by?

21 A. Fares Udah, from somewhere, had learned

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1 death was treated afterwards. But you agree with me
2 that to the Palestinians, at least, it mattered how he
3 had died, right? Leaving aside whether you think it is
4 true, the Palestinian narrative was that he was shot by
5 an IDF soldier while he was throwing stones?

6 A. That's the Palestinian narrative.

7 Q. You tell me that you are not sure whether
8 that's true?

9 A. Correct.

10 Q. Okay. And, however, if a child, sad as it
11 may be, was out trying to, in the eyes of the
12 Palestinians, resist the occupation as something so
13 futilest, throwing stones at a tank, it's a tragedy,
14 right? Isn't that a tragedy?

15 A. If his leadership told him to go out and
16 put your life in danger and become a Shahid, that is
17 not only tragic, that is child abuse.

18 That is what we were seeing here. With all
19 these video clips with this boy over and over again
20 being shown on TV dying and being a Shahid. That's the
21 point of this here, is that these children who became

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1 that Shahada is something that he wants to achieve even
2 though he's 14 years old. He decorated a wreath with
3 his photo in it and he already wrote the brave Shahid
4 Fares Udah. A child 14 years old does not wake up one
5 morning seeking death.

6 If you had told me he woke up one morning
7 saying, I'm going to go fight the Israeli soldiers,
8 okay, he could say. But a child does not wake up
9 saying, I want to die at age 14, if he hadn't been
10 really convinced by this whole atmosphere that was
11 going on around him.

12 Q. If a child at age 14 wanted to fight
13 Israeli soldiers, he would die simply because he didn't
14 have armaments, he didn't have a weapon, he didn't have
15 a way to defend himself against bullets, so do you know
16 whether he was motivated by a desire to die or desire
17 to fight?

18 A. Well, his own statement here is that he
19 desired to be a Shahid. He prepared his wreath for
20 himself. Your statement if -- your implication here
21 that Israeli soldiers -- the child would go out in

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1 front of Israeli soldiers and Israeli soldiers would
2 kill him.

3 I just want to describe to you, I can't
4 remember if I included this, but there's a Palestinian
5 child that had been injured a number of times fighting
6 Israeli soldiers. And this child was then brought in
7 for a live interview on Palestinian television.

8 During this interview the child was asked
9 to describe what happened. And he described that he
10 took the flag and, I ran toward the tank, sort of
11 paraphrasing this part, he describes that he got to the
12 tank and the Israeli soldier looked at him, and he said
13 I'm going to be Shahid.

14 He said, thought to himself. I can't
15 remember. And then he writes or then he said on
16 television, the Israeli soldier hesitated and then he
17 didn't shoot at me, he shot up in the air at the flag I
18 was holding.

19 And then the interviewer said, do Israeli
20 soldiers hesitate? He says, again paraphrasing a
21 little bit here, but this is the gist of what he said,

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1 yes, they look at you like a father looks at his son.
2 You can see they have humanity.

3 Those words are precise. Now this is a
4 Palestinian child who is fighting Israeli soldiers, who
5 is injured, who is describing why the soldier didn't
6 look at him. He says, because they look at you like a
7 father looks at his son. You can see they have
8 humanity.

9 And that's why the language of your
10 question implying that Israeli soldiers are taking
11 target practice at Palestinian children because they
12 went out in the street, you didn't use those words, but
13 just because they were throwing stones.

14 Israeli soldiers weren't shooting at
15 Palestinian children because they were throwing stones.
16 I think this boy was describing the attitude of the
17 overwhelming, if not all, Israeli soldiers when they
18 see children, they don't want to be fighting with
19 children.

20 Q. So you just characterized my question --

21 A. It was something about the question. I

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1 can't remember. There was some language.

2 Q. That's an interpretation of what you
3 thought I meant, I guess?

4 A. I would like to hear the words, because it
5 was something -- you said something about Israeli
6 soldiers -- all Palestinian children have to do is go
7 out and they will shot, something like that. Something
8 that I heard you say like that. That's what I was
9 referring to.

10 Q. Okay. What I was saying --
11 MR. YALOWITZ: Would now be all right?
12 MR. ROCHON: That's fine.
13 (Brief Recess.)

14 BY MR. ROCHON:

15 Q. If you would turn, please, to Page 24 of
16 your report.

17 A. Yes.

18 Q. Do you see that?

19 A. I have 24, yes.

20 Q. At the top of Page 24, this is in
21 connection with the PA authority -- having planned the

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1 Second Intifada, right, Yasser Arafat having planned
2 it?

3 A. Planned the violence.

4 Q. The page before. Under it. The
5 Palestinians call this the Al Aqsa Intifada because
6 they started it in response to -- that's what you say?

7 A. Correct.

8 Q. And then you got this quote on the next
9 page.

10 A. Yes.

11 Q. And in this quote you say that he summoned
12 Palestinian or he's quoted as having the Palestinian
13 leadership to this emergency meeting and you go on and
14 then you see where there is an ellipsis in Line 3?

15 A. Yes.

16 Q. Okay. First of all, whatever appeared
17 there in Al-Ayyam was in Arabic, right. This is a
18 translation of whatever appeared in Al-Ayyam?

19 A. The original of the whole article appeared
20 in Arabic.

21 Q. Do you know what was in those ellipses, if

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1 anything?

2 A. Yes, at some point I knew items were
3 shortened to keep this report, which was 65 pages, I
4 don't remember specifically right now offhand what was
5 there.

6 Q. It said, quote, Barack has started to
7 execute Field of Thorns that I told you all about.
8 That's what's left out, right?

9 A. Right.

10 Q. And Field of Thorns was an Israeli
11 operation?

12 A. It never happened. It was a Palestinian
13 idea that Israel had some plan for an operation. I
14 can't remember what it was but --

15 Q. This has been left out of the translation
16 that you provided in your expert report, right?

17 A. Yes.

18 Q. Okay. And understanding you may not accept
19 the Palestinian theory that Barack had a Field of
20 Thorns plan but that is what the leaders of Palestinian
21 Authority believed, correct?

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1 basing that on.

2 Q. Okay. What you rely on there is an
3 Al-Ayyam article -- do you recall that that article
4 defined and described what Field of Thorns meant?

5 A. I don't remember, but it's something I can
6 very easily look up.

7 Q. Isn't it a fact that on Page 4 of that
8 report in Al-Ayyam it was said to be, quote, operation
9 that allowed for the use of live ammunition against
10 those upsetting public order, period, close quotes?

11 A. I don't think that was in the same article
12 you are saying?

13 Q. That's what I'm saying.

14 A. I don't remember that from the article.

15 Q. Okay. And, in fact, it's the case, isn't
16 it, that in the first two weeks of the intifada that
17 Israeli Defense Force Soldiers fired 1.2 million
18 rounds, almost 100,000 a day?

19 A. I don't know.

20 Q. Isn't it a fact that in the first months of
21 the unrest dozens of Palestinians were killed with

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1 A. Either they believed it or they said it.
2 On occasion it was said, yes.

3 Q. And the Field of Thorns was understood to
4 be an operation that allowed the use of live ammunition
5 against those upsetting public order. That's how the
6 Palestinians understood it, right?

7 A. I don't remember that definition, but -- I
8 don't remember that definition.

9 Q. What did you remember the Field of Thorns
10 to be?

11 A. I'm not sure it was ever precisely defined.
12 I don't remember. It was precisely designed by the
13 Palestinian leadership, other than trying to indicate
14 that Israel had some plan. I don't remember.

15 Q. Okay. And the plan involved whether it
16 involved use -- recall involving use of live
17 ammunition, the understanding by the Palestinian
18 leaders was, it involved aggressive Israeli response to
19 any protest, correct?

20 A. I don't know if -- certainly not the
21 protesting. It wasn't -- I don't know what you are

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1 relatively few Israeli casualties?

2 A. I don't remember the number of the figures.
3 I'm not saying that they are wrong. I just don't
4 remember the figures.

5 Q. You have a view, an opinion that the Second
6 Intifada was started by Arafat on purpose and that the
7 march to Temple Mount by Sharon was just an excuse.
8 That's your claim in this report, isn't it?

9 A. Was the spark, yes.

10 Q. It was the spark.

11 A. That he used, intentionally used for
12 violence.

13 Q. You are aware --

14 A. Let me point out one thing, when I do say
15 that -- I'm not saying that Yasser Arafat planned
16 violence from October 2000 until the end of 2004, or he
17 had any kind of master plan.

18 I'm saying that Yasser Arafat, I think the
19 polls, how he had been very, very unpopular, he had not
20 been seen as having allowed Palestinians human rights.

21 It was for this reason that, possibly for

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1 this reason, but certainly that was his status at that
 2 time that he decided to initiate violence. Violence
 3 historically would bring popularity to a leader.
 4 And in this context I think it was
 5 22 percent of Palestinians thinking that there was,
 6 which had been going down four years in a row from 1996
 7 to 2000, it had gone down from 50 percent thinking
 8 there was positive democracy and human rights and the
 9 PA going down to 22 percent in the early part of 2000.

10 So within that context he was going to
 11 start some kind of violence. And he needed the
 12 violence, and this is what he says to his people, I
 13 will use the battle for Jerusalem, has become Jerusalem
 14 is in danger, Al Aqsa is in danger.

15 Certainly Al Aqsa wasn't in danger. Israel
 16 wasn't destroying Al Aqsa. Then he talks about here
 17 having full conviction, that it will be easy to enlist
 18 the Palestinian Arab Street and motivate them to take
 19 part in the battle, in defense of Jerusalem and the
 20 holy places.

21 He was explicitly using this spark. If it

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1 would go for a week, if it would go for ten days, for
 2 two months, I don't know to what extent.

3 He certainly wanted violence. And as it
 4 developed, as we see by the intensity of the clips on
 5 Palestinian TV motivating it, the intensity of the
 6 sermons that were coming on. He certainly didn't try
 7 to stop it. Just the opposite. He became the leading
 8 and driving force behind this.

9 Q. You said he wanted violence?

10 A. Yes.

11 Q. And you are aware that the assessments by
 12 IDF Military Intelligence at that time that have been
 13 reported in Haaretz suggest a different view by some
 14 members of the IDF Military Intelligence, correct?

15 A. I don't know what you are referring to
 16 specifically. But my Palestinian Media Watch, that is,
 17 I wrote a report under Palestinian Media Watch that was
 18 dated before this meeting and before Sharon had talked
 19 about going to Temple Mount.

20 It was September 10th. And the report
 21 which is attached, it's entitled Summer of 2000, and

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1 that was the beginning of -- the headline of the
 2 report. The report opens with the sentence: The
 3 atmosphere of Palestinian television is the eve of the
 4 outbreak of the war.

5 What we had seen is that from this period
 6 of July and August and September, this entire period
 7 there was a change in the quality and quantity of
 8 promotion. And, in fact, it was -- so that when we
 9 publicized this, we were actually anticipating what
 10 happened.

11 That a few weeks later Arafat found his
 12 excuse and then successfully was able to use this to
 13 start this. Then we have Faluji a few months later
 14 that in July he already planned it. That is what we
 15 documented in our report.

16 So our monitoring methods, our collection
 17 methods and our conclusions turned out to be very, very
 18 accurate and very precise, because it was corroborated
 19 both by what happened, as well as Faluji saying this.

20 Q. So there is no question there was great
 21 upset at that time prior to Sharon going to the Temple

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1 Mount. But your opinion, based on what was in the
 2 media, is that Arafat wanted violence, right?

3 A. Correct.

4 Q. And my question to you that sparked your
 5 last answer was, aren't you aware that IDF Military
 6 Intelligence at the time disagrees with that theory
 7 including Amos Malka. You know who he was?

8 A. Yes. Are you saying later on they wrote
 9 this or these were articles written at the time.

10 Q. Later on the assessment that was
 11 contemporaneous was released and reported in Haaretz.
 12 You are aware of that?

13 A. I know there's a disagreement in
 14 intelligence. I have spoken to -- I remember speaking
 15 to Moshe Yaalon, Defense Minister, about this a number
 16 of years ago, not in any context of any lawsuits. Long
 17 before we were together in Europe at a conference.

18 And I told him about our report. And he
 19 said -- I don't think he was chief of staff at that
 20 time. I think he was in military intelligence,
 21 although I don't know for sure. He said that his

75 (Pages 294 to 297)

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1 assessment also was that -- the time violence that
 2 Arafat was going to start something.
 3 When I spoke in the Foreign Affairs and
 4 Defense Committee of the Israeli Knesset and meetings
 5 with the professional, with the head of the Committee,
 6 as well as the advisors from intelligence, advisors to
 7 the Committee before the meeting. I had told them what
 8 I was going to be showing to the committee at the
 9 hearing, about the progression of violence and
 10 especially focusing on this period.

11 I remember the chairman asked -- did you
 12 know he was at that time during the beginning of
 13 Intifada, he was head of Military Intelligence. He
 14 asked him, he said PMW was precise, on the money, or
 15 exactly predicting this, were you in military
 16 intelligence, so he said our assessment was something
 17 would start, that Arafat was going to start violence
 18 sometime within the year, but they hadn't actually
 19 narrowed it down as precisely as we had.

20 So I don't know -- again, there were
 21 different assessments. I think our assessment and the

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1 fact that we wrote it not after the fact but before the
 2 fact I think indicates that we were right on the money.

3 MR. ROCHON: I ask to have this marked as
 4 469.

5 (Marcus Exhibit 469 marked for purposes of
 6 identification.)

7 (Discussion off the record.)

8 BY MR. ROCHON:

9 Q. This is a Haaretz article from
 10 October 21st, 2011. This issue has gotten a fair
 11 amount of play in the Israeli media. I would like to
 12 see do you recognize this article?

13 A. I didn't see this particular article.

14 Q. Okay.

15 A. You want me to look at it and respond to
 16 it?

17 Q. I want to direct your attention to a
 18 portion near the bottom of the first page to begin
 19 with. And it's the 4th or 5th paragraph from the
 20 bottom where it says Arafat wanted to contain the
 21 violence. Do you see that?

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1 A. Okay. I see that.

2 Q. Okay. And it was reported here in Haaretz
 3 that, and you'll see in the paragraph immediately after
 4 Arafat wanted to contain the violence, it was reported
 5 here in Haaretz that, in the last sentence of that
 6 paragraph, that after the start of the Intifada, the
 7 Department's assessment was that Arafat had not
 8 initiated it and that he had even tried to contain the
 9 violence a number of times.

10 Do you see that sentence?

11 A. Yes.

12 Q. You see it. And are you aware then, sir,
 13 of the fact that the IDF intelligence apparatus,
 14 including Mr. Malka, who I referenced earlier, reached
 15 that conclusion in written reports at the time?

16 A. The Israeli Intelligence was also surprised
 17 about the Arab Spring and they were surprised by what
 18 happened in Egypt. The Israeli Intelligence was
 19 surprised by the Yom Kippur War. They made a mistake
 20 here. That's what they assessed.

21 And the fact that we were able to reach the

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1 exact opposite conclusion and wrote it and publicized
 2 it and documented why, I think, is a good statement for
 3 the accuracy of our research.

4 Q. Are you aware that because the oral claims
 5 by one member of the Military Intelligence, an Amos
 6 Gilad, had persuaded leaders to have a very sharp and
 7 violent response to the inception of the Second
 8 Intifada because he took the view, as did you, that
 9 Arafat wanted to start it?

10 A. I'm not familiar. I didn't read it now.

11 Q. Okay. You would agree with me, wouldn't
 12 you, that the IDF had sources and information that were
 13 not available to you in your role of reviewing video
 14 clips and newspaper articles?

15 A. Yes.

16 Q. Go to the last page of the article, please.
 17 You see up -- you'll see six paragraphs, seven
 18 paragraphs down a check carried out by the Army?

19 A. Yes.

20 Q. At the request of the Director of Military
 21 Intelligence revealed that within the Intifada's first

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1 two weeks Israeli Defense Forces Soldiers fired
 2 1.2 million rounds, almost 100,000 a day, and that
 3 dozens of Palestinians were killed in the first month
 4 with relatively few Israeli casualties.
 5 You see that?
 6 A. Yes, I see that.
 7 Q. Do you have any reason to doubt the
 8 accuracy of the Haaretz report about what the Director
 9 of Military Intelligence revealed?
 10 A. No.
 11 Q. I think I want to do at least one more
 12 thing before we are done today. If you would, I want
 13 to talk about the polling that you cite in your
 14 Rebuttal Report.
 15 I think that's on page -- beginning of your
 16 Rebuttal Report on Pages 2 to 3, for instance. You
 17 cite a lot of statistics there?
 18 A. Correct.
 19 Q. And they are from a Commentary Magazine
 20 article July and August of 2002?
 21 A. Correct.

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1 Q. That article is written by Efraim Karsh,
 2 right?
 3 A. Yes.
 4 Q. You know Professor Karsh?
 5 A. I may have met him.
 6 Q. Did you know he's been put forward as an
 7 expert in this case, as have you?
 8 A. I might have known that. I certainly
 9 didn't connect it when I used these polls.
 10 Q. The article from which you take these
 11 charts is, was called, quote, what occupation, close
 12 quote. That's the name of his article, wasn't it?
 13 A. I don't remember. Like I said, this was a
 14 long time ago. I took the charts out statistics that
 15 was -- I felt, again, I didn't take it specifically for
 16 this --
 17 Q. You wrote this report yourself?
 18 A. I wrote the report. The statistics I had
 19 taken out of the original article a long time ago and
 20 put them in my computer somewhere. I took it out. So
 21 I haven't read the article in a very long time.

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1 Q. Okay. So your report is dated
 2 September 16th, but you hadn't looked at the article in
 3 a while?
 4 A. Just the statistics.
 5 Q. You don't know where he got these
 6 statistics from, do you?
 7 A. No, I don't.
 8 (Marcus Exhibit 470 marked for purposes of
 9 identification.)
 10 BY MR. ROCHON:
 11 Q. Here you go. 470. Do you recognize this
 12 to be the article from which you drew the statistics or
 13 are not?
 14 A. Yes, this is where it came from.
 15 Q. It's only one footnote in that article. It
 16 doesn't reference the place from which he got these
 17 statistics, correct? Second to last page is a single
 18 footnote.
 19 A. Yes, I see it.
 20 Q. He offers no citation in this thing as to
 21 where he got these statistics from, does he?

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1 A. I don't have time to read the whole article
 2 now. I don't think you want me to read it. That will
 3 take the next 20 minutes.
 4 Q. Okay. Will you take my word for the fact
 5 he doesn't have any sources?
 6 MR. YALOWITZ: Don't take his word.
 7 BY MR. ROCHON:
 8 Q. I'll tell you what, I will withdraw the
 9 last question so that we move things along.
 10 Did you do anything to verify the
 11 statistics that you repeat in your report?
 12 A. I take sources, when I'm using sources that
 13 aren't Palestinian sources, that are reliable sources,
 14 Commentary is a very respected magazine, Efraim Karsh
 15 is also respected.
 16 And I had no reason, when I see these
 17 sources, sourced them here is Commentary magazine, I
 18 have no reason not to -- doubt that he did not have the
 19 information. If there is no source here, then I'm
 20 certainly able to use him as a source.
 21 Q. All right. You said when you get something

77 (Pages 302 to 305)

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1 that's from a non-Palestinian, it's a reliable
 2 magazine, you'll consider it to be reliable?
 3 MR. YALOWITZ: Objection. Misstates the
 4 testimony.
 5 THE WITNESS: I'm saying I would have to
 6 judge it.
 7 BY MR. ROCHON:
 8 Q. So the thrust of his statistics, or
 9 whatever they are, that you repeat here are that West
 10 Bank and Gaza were supposedly doing well under Israeli
 11 occupation?
 12 MR. YALOWITZ: Object to the form.
 13 THE WITNESS: The substance here is that
 14 there was tremendous economic growth, growth in
 15 healthcare under the Israeli administration,
 16 infrastructure, et cetera.
 17 BY MR. ROCHON:
 18 Q. The charts that are in your report were not
 19 in Commentary Magazine, correct?
 20 A. I don't know if this was the original, but
 21 certainly they are not in this one over here. I don't

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1 know, like I say, I've had these charts that I have
 2 been using for a very long time and I don't remember
 3 initially where the charts were from.
 4 Q. All right. It says in your report on Page
 5 2 that the source of all charts and stats is Commentary
 6 Magazine?
 7 A. Okay. Like I say, the statistics, yes, and
 8 the charts I obviously assumed so when I did it, when I
 9 wrote it. It's possible that either we or someone else
 10 had made the charts themselves.
 11 Q. So you may not know where the charts came
 12 from?
 13 A. The actual charts -- these pictures that
 14 depict the statistics, no.
 15 Q. I didn't hear it?
 16 A. The pictures, I can't remember specifically
 17 who it was or made them, if my office made them. I
 18 can't remember.
 19 Q. The reason for this, according to your
 20 Rebuttal Report, was that to try to show that any human
 21 rights violations, humiliation under the occupation

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1 could not have been the cause of the violence. That's
 2 your conclusion, right?
 3 A. That's correct.
 4 Q. And you never cite in your Rebuttal Report
 5 or your main report the settlement enterprise and how
 6 Palestinians viewed that, do you?
 7 A. No, it wasn't cited.
 8 Q. Okay. And you are aware that during the
 9 period from '93 to 2000, that the settler population
 10 had grown quite a bit, from 110,000 to 195,000,
 11 correct?
 12 A. I don't know the specific numbers, but I
 13 know from -- which period are you talking about?
 14 Q. '93 to 2000.
 15 A. '93 to 2000. There was nothing in the Oslo
 16 Accords that restricted -- and that's why, you know.
 17 Q. Okay. I'm just saying they grew.
 18 A. Again, I don't know the numbers. You're
 19 saying the numbers. I know there was continued growth.
 20 Q. All right. And you don't discuss the
 21 impact that that would have had on the state of mind of

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1 any Palestinians in either of your reports, whether
 2 that could have caused anger -- upset?
 3 A. I didn't refer to it, no.
 4 Q. You would agree with me, wouldn't you, that
 5 despite the fact you don't discuss it, that in fact,
 6 there was a lot of reporting in the media, Palestinian
 7 media that complained about the settlement enterprise
 8 in that period '93 to 2000?
 9 A. I don't remember that being a major part of
 10 the Palestinian media. At the time settlements they
 11 knew had been there for a long time and settlements
 12 were going to be part of final status. They weren't
 13 yet up to final status.
 14 The reporting, when Palestinians did
 15 complain about settlements from our perspective
 16 Palestinian Media Watch, it was a legitimate complaint,
 17 because settlements were things that were up for
 18 negotiations and, therefore, it wasn't something that
 19 we reported on.
 20 We reported on things that were violations.
 21 When we reported on demonizing of Jews, when they said

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1 that Israel didn't have a right to exist in any
2 borders. Those are things that we felt were
3 legitimate. When they complained about building in
4 Jerusalem, we also felt it was a legitimate argument on
5 their side. So, therefore, you won't find on our
6 website that kind of statement, because those were seen
7 as legitimate statements.

8 Q. So that wasn't one of the top 30 topics
9 that you people tracked?

10 A. We might have tracked it. I can't even
11 tell you today specifically -- but we were looking for
12 impediment to peace. For the Palestinians to complain
13 about settlements wasn't an impediment to peace. It
14 was within the framework because it was still up for
15 negotiations.

16 Q. You weren't looking in your work for things
17 that might have legitimately frustrated Palestinians.
18 That wasn't part of what your researchers was looking
19 for. Is that correct?

20 MR. YALOWITZ: Object to the form.

21 THE WITNESS: I have to try to figure out

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1 Q. You don't discuss in much detail, at least,
2 the permit and closure policies that affected the West
3 Bank in your report, do you?

4 A. The what?

5 Q. Permit and closure policies that Israel
6 imposed in the West Bank.

7 A. There were a lot of things that aren't
8 discussed.

9 Q. I'm asking you if that's one of them?

10 A. When you say closure, what exactly do you
11 mean? Very often, when there should be significant
12 terrorism, Israel would then either -- or you say
13 permits. Permits to work in Israel was a big issue.
14 There were hundreds of thousands of Palestinians
15 working in Israel before the violence started.

16 When the violence and terror increased,
17 Israel had to very much, both have more security on
18 people who would come in, as well as sometimes just
19 canceling all the permits.

20 Q. My question to you, in '92 to 2000 period,
21 again, you are aware that there were reports from a

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1 what you mean by the question.

2 BY MR. ROCHON:

3 Q. Then I'll ask it a different way, if it's
4 that hard. It was not part of your researchers or your
5 people working for your task to look at things that
6 might cause what you viewed as legitimate frustration
7 among the Palestinians?

8 MR. YALOWITZ: Object to the form.

9 THE WITNESS: I don't think that's the
10 case. We were looking for anything that -- we were
11 looking at everything that was going on in their world.
12 And what I said before is that we wouldn't have -- we
13 would have discussed it, we would have talked about it,
14 but it wouldn't have been presented to the media as a
15 problem. Because we saw it as legitimate.

16 Things that were legitimate Palestinian
17 arguments were in a sense, they were legitimate and
18 there was no, like I said, we were exposing things that
19 were impediments. That was not an impediment. That
20 was legitimate.

21 BY MR. ROCHON:

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1 variety of organizations, Palestinian, international
2 and others, as to the impact of closures and
3 checkpoints on the Palestinian economy.

4 I'm not asking whether you agree with them.
5 I'm asking whether you are aware there were such
6 reports?

7 A. I don't remember those reports.

8 Q. Okay. In terms of what impact road
9 closures and checkpoint closures had on the Palestinian
10 economy, that's not something you track, you tracked
11 during that period?

12 A. No.

13 Q. Okay. You do cite some polling data in
14 your Rebuttal Report, correct? It starts on Page 4,
15 the polling data from Dr. Khalil Shikaki.

16 A. Yes.

17 Q. And you specifically note that 77 percent
18 of Palestinians thought that democracy and human rights
19 in Israel was good?

20 A. Positive rating.

21 Q. The poll doesn't discuss, or at least as

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1 you reported, it doesn't discuss whether the questions
2 about Israel democracy and human rights record was
3 regarding how Israel treated its own citizens or how it
4 treated Palestinians, correct?

5 A. The question certainly didn't limit to how
6 it treated its own citizens.

7 Q. Okay. But it didn't say, how do you rate
8 Israel regarding --

9 A. The language is all quoted here in the
10 poll. The quote bottom of Page 4: Palestinian public
11 perception, status of democracy and human rights in
12 West Bank and Gaza improved to 50 percent compared to
13 44, compared to other countries Palestine came after
14 Israel, which received 77 percent in April and
15 78 percent in December. U.S. was 66. France 61.

16 It certainly is an open-ended question.
17 And I cannot believe, if the Palestinians would have
18 interpreted this, if they had been suffering under
19 Israel human rights, they would have given Israel the
20 best in the world on this poll, like I said, is
21 consistent four years in a row.

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1 And it meant that the basic contact between
2 Palestinians and Israelis over this entire period was
3 not as described in any of those reports as human
4 rights abuse.

5 Q. You didn't cite the part of the poll that
6 says that support for suicide armed attack had doubled
7 from March 1996 to April 1997, did you?

8 A. I wasn't dealing with that issue. There
9 were many things polled over that period.

10 Q. Well, you didn't cite that one, did you?

11 A. What didn't I cite?

12 Q. The fact that suicide armed attacks,
13 support for them had almost doubled from March 1996 to
14 April of 1997?

15 A. Doubled from what to what?

16 Q. From 21 percent to 40 percent.

17 A. I did not reach.

18 Q. Did you know it?

19 A. It's surprising to me now. I might have
20 read it at the time, I don't remember.

21 Q. If things were so great regarding the

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1 occupation, why did support for suicide armed attacks
2 double in a period of one year?

3 A. From which year again?

4 Q. March '96 to April '97.

5 MR. YALOWITZ: Object to the form.
6 Predicate.

7 THE WITNESS: I would have to look at the
8 period and analyze it again. What specifically was
9 happening at the time of the poll.

10 BY MR. ROCHON:

11 Q. You have suggested in your reports, one of
12 your principal conclusions is that the encouragement of
13 suicide attacks was something that the PA was
14 instituting by Yasser Arafat for all the reasons you
15 say in your report, right?

16 A. Yes.

17 Q. The fact is, as a baseline in April of '97
18 three years before, 40 percent of Palestinians
19 supported suicide attacks according to the same poll?

20 A. I would have to look at specific things,
21 what was happening, you know, when that poll, what

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1 happened at the time. Don't know. Have to check it.

2 Q. All right. You also go on in your Rebuttal
3 Report at Page 5 to cite a poll from October of 1999
4 that says that the positive evaluation of Israeli and
5 democracy was 67 percent, right?

6 A. Yes.

7 Q. All right. Again, this doesn't indicate
8 whether the questioning was about Israel's democracy
9 and human rights record regarding its citizens or
10 Palestinians, correct?

11 A. Correct.

12 Q. And the poll also shows, although I don't
13 think it's -- it's not reported by you, but the same
14 poll showed that the percentage of those supporting
15 violence against Israelis had risen from 36 percent on
16 the previous September to 39 percent as of October of
17 1999. Did you know that?

18 A. Well, you talk a 3 percent change, I am not
19 familiar with that. Again, I would have to look at it
20 again and go through it and see what was happening at
21 the time.

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1 Q. The thrust of your Rebuttal Report is that
2 the Palestinians were benefiting from Israeli democracy
3 and human rights. That's your suggestion in your
4 Rebuttal Report.

5 A. From 1967 through 1993, '94 they absolutely
6 benefited from Israel's human rights and democracy and
7 healthcare infrastructure. I don't think -- you might
8 say that there were no sources. I don't think you'll
9 find Palestinians who will argue with this or find any
10 sources that will indicate otherwise.

11 Q. Leaving aside what I can or can't find, all
12 I get to do in this process is ask you questions and
13 show you documents.

14 But the thrust of your reports is that the
15 violence that related to the cases here Second Intifada
16 was designed by Arafat because of all the other
17 problems that he had. And that that's why the suicide
18 attacks were then encouraged and why they occurred.
19 That's basically what you are here to tell me?

20 MR. YALOWITZ: Object to the form.

21 THE WITNESS: The promotion of hatred

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1 against Israel and against Israelis and against Jews
2 was very, very high in Palestinian official television
3 programming, et cetera, and the newspapers.

4 You saw the articles by -- before from
5 Isabel Kershner. If I'm not mistaken, both of those
6 were prior to Intifada. And the Wye Accords, which the
7 Palestinian Authority, when Israel brought up for the
8 first time in negotiations the problem of incitement
9 was all before the, before the period of intifada.

10 What we witnessed, what we witnessed and I
11 think you saw it in the words of Isabel Kershner, we
12 said we had hoped to see a period of calming down, of
13 peace promotion and what we were finding was hate
14 promotion, et cetera.

15 And the entire period pre-Intifada was a
16 period of intense hate promotion. The change, and
17 that's why I say I would have to look and see those
18 specific periods. There was intense hate promotion.

19 The big change in the summer of 2000 was
20 the quality of the violence promotion and the number of
21 violence clips and that's one of the reasons we saw a

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1 big change and that's how we anticipated the violence
2 in the Intifada.

3 It's not like the Palestinian Authority
4 before 2000 was promoting peace with Israel, absolutely
5 not. They were -- Yasser Arafat was promoting hatred,
6 he was not promoting accepting Israel's right to exist.
7 He was delegitimizing Israel, delegitimizing Jews. All
8 this was going on all along.

9 There were euphemisms for violence that
10 would happen in the future primarily. But I'm not
11 saying that the Palestinian Authority wasn't involved
12 before this. And all of this, in fact, a big drop I
13 think in respect to Israeli democracy that happened
14 during these four years from 78 to 77 percent to down
15 to I think it was 65 percent in the final year, was
16 probably a reflection of this hate incitement that had
17 been going on in the Palestinian Authority.

18 With this all Arafat's human rights record
19 was so low. And he had gone down tremendously, as you
20 see here, to 22 percent giving him positive rating.
21 Arafat's popularity dropped the lowest, everything

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1 there, and at this point is when he, when his
2 population had totally lost respect for him, that's
3 when he started the Intifada.

4 BY MR. ROCHON:

5 Q. Your theory, in essence, having lost the
6 population completely, the population then was
7 influenced by the PA?

8 A. Having lost the population he packaged this
9 violence as Al Aqsa Intifada. These are very religious
10 people, this is their religious symbol. He had started
11 what he sometimes called the mini-intifada, I think he
12 called it a few years earlier when Israel had opened up
13 a tunnel to allow visitors, to allow excavations, not
14 excavations, people to visit, the Temple Mount parts
15 that were under ground.

16 He started a few days violence, I think was
17 70 Palestinians were killed, 10 Israelis were killed.
18 And again, he used Jerusalem and Al Aqsa as the key.
19 Something that happened before. He decided to use it
20 again.

21 Q. Throughout your testimony, your reports

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1 here today you have discussed, in essence, that the
2 media, print and journalism, as well the sermons,
3 influenced the -- reflected Palestinian policy,
4 correct, and was designed to create a violent Intifada?

5 MR. YALOWITZ: Object to the form.

6 THE WITNESS: It certainly reflected the
7 ideology and policy.

8 BY MR. ROCHON:

9 Q. What's missing from any of your discussion
10 is whether or not the things that Israel had done,
11 whether acts of violence, the occupation, settlements,
12 border closings, checkpoints angered the Palestinian
13 people.

14 You don't discuss those things in either of
15 your reports, do you?

16 A. No.

17 Q. And you can't eliminate, can you, whether
18 or not those things affected Palestinian people, made
19 them angry or upset?

20 A. Well, when Yasser Arafat wanted to start
21 the violence, he didn't call it the checkpoint intifada

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1 or the population didn't call it. He didn't say, let's
2 go to a checkpoint and from the checkpoint we're going
3 start out. He said, well, Ariel Sharon is going to
4 Temple Mount. This is what is going to be the spark
5 for the violence.

6 And that's what was built. When we
7 listened to the sermons on TV, we did not hear the
8 sermon saying we will keep violence up until they take
9 away the checkpoints. We heard that the Jews are the
10 enemies of Allah and, therefore, we have to blow them
11 up.

12 If Palestinians were saying what you're
13 saying, that would be something. But they weren't
14 saying that themselves.

15 Q. The fact that the visit to Temple Mount
16 would be provocative was something that was known to
17 Israelis beforehand and some tried to get Sharon not to
18 go, correct?

19 A. It's possible. It's possible. I can't say
20 for sure I remember correctly, but it seems feasible.

21 Q. It did not take Yasser Arafat to tell

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1 someone who is of the Muslim Faith that this was an
2 upsetting thing, correct?

3 A. The truth is that there are visits all the
4 time, today, to the Temple Mount, by Israelis. If
5 Yasser Arafat wouldn't have built it up into this issue
6 and called for the violence that he did, it might have
7 had a small -- I don't know what would have happened.
8 It might have been nothing. It might have been a small
9 demonstration. But it was, you know, as his advisor
10 said, he decided to use this and he called his forces
11 together to use this. Might have gone over with
12 nothing.

13 Q. Last question -- I think last question.
14 You said, if Yasser Arafat hadn't used this as a call
15 to violence. Nowhere in your report does Yasser Arafat
16 actually say, be violent, or use violence, or use
17 weapons, or attack Israelis. That's not anything that
18 you quote in any of your clippings, is it?

19 A. Correct.

20 MR. ROCHON: I have no further questions.

21

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